

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

COMPLAINT (ULP) NO. 07/2025
(CNR No. MHLC060000612025)

Zakirhusain Ibrahim Shaikh

Age- 50, Occ.- Service (Driver)

R/a- Ner SaibabaMandir, G-Triveni CHS

Hanuman Nagar, Kandivali East,

Mumbai 400101

Complainant...

V/S.

1. Divisional Controller, (DC)

MSRTC, Mumbai Division,

Near premier company, Vidyavihar(West)

Mumbai 400086

2. Divisional Traffct Superintendant, (DTS)

MSRTC, Mumbai Division,

Near premier company, Vidyavihar(West)

Mumbai 400086

Respondent(s)...

CORAM : G. S. Hange, Judge, Labour Court, Alibag.

APPEARANCES :

1] For the complainant - Adv. V. R. Mehata

2] For the Respondents – Adv. S.M. Mokal

ORDER PART I

(Passed on 31/12/2025)

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.

Facts in brief

2. The complainant is a Driver in employment of respondent

no. 1. On 16/04/2025 he was charge sheeted for misconduct. It has been alleged that on 07/04/2025 he was on duty on Uran-Borivali route and was driving the bus MH 20 BL 3262 on that route. On 08/04/2025 he was plying the bus from Borivali to Uran after night halt at Borivali and when the bus came at Kesar mill, Thane the diesel of the bus finished and the bus stopped. When it was asked to the complainant about the incident he told that on 07/04/2025 he had taken the possession of the bus for duty no. 53/54 as the Vehicle Supervisor Mr. Sanjeevan Gonjari assured him about sufficient diesel in the bus therefore, he did not check the availability of diesel, and thereafter took the bus for duty. Thus, because of the negligence of the complainant of not checking the availability of diesel in the bus prior to beginning of his duty on 07/04/2025 the inconvenience was caused to the passengers and it also damaged the image of the corporation in the eyes of public and the corporation also sustained economic loss due to cancellation of one trip of Uran-Thane-Uran.

3. According to complainant the charges leveled against him are false and vague. The real fact is that on 07/04/2025 he joined duty and had asked the Vehicle Supervisor Mr. Gonjari about the availability diesel in the bus. Mr Gonjari told him that there was sufficient diesel in bus for his duty. The complainant believed him and took the possession of the bus and started his duty as usual. Before joining the duty there was no employee of the corporation present to check and fill the diesel at Uran depot and therefore, he asked Mr. Gonjari about the diesel availability and only when Mr.

Gonjari gave a green signal he moved ahead with his duty. According to him the corporation without taking any action against Mr. Gonjari or the absent employee responsible for checking the availability of diesel the took action against him and indulged in his victimisation.

4. According to complainant on 07/04/2025 he finished three trips from Uran to Thane and Uran to Borivali without any problem. He had night halt at Borivali on 07/04/2025 and on the next day he started his duty at 6:45 AM for Borivali Uran but there was no facility available at Borivali station to check and fill the diesel. Therefore, due to less average of diesel or the mechanical fault the bus was stopped at Kesar Mill, Thane for non availability of diesel. The complainant took the efforts and started the bus and took it to the Thane station. No inconvenience was caused to the passengers as all reached Thane safely. There was little delay to reach Uran as he went to Khopat to fill the diesel in the bus.

5. According to complainant the respondent no. 2 DTS had issued him chargesheet and conducted the enquiry. The Enquiry Officer considered all the facts, and, thereafter the punishment of stoppage of one yearly increment for short period of six months was imposed on him by order dated 22/05/2025. Thereafter, the respondent no. 1 issued notice dated 23/07/2025 and the enquiry was kept on 04/08/2025 as per the review of earlier order of imposing punishment. However, without examining any witness and without considering final defense statement of the complainant the

show cause notice was issued to him on 11/08/2025 for his dismissal. The respondents imposed punishment for the second time on him for the same chargesheet and same misconduct which is illegal and liable to be set aside.

6. According to complainant the enquiry was completed hurriedly and only in one seating by respondent no. 2 management. The reporter admitted that the Vehicle Supervisor Mr. Gonjari had told complainant about availability of diesel in bus, and, thereafter the complainant started his duty. He states that the dismissal notice is issued against him for patently false reasons and it is clear cut victimisation under Item I of the Act. According to him in his service of 16 years no memo, chargesheet or show cause was issued against him. The Enquiry Officer did not examine Mr. Gonjari. The Enquiry Officer examined the reporter Mr. Garade who was not eye witness to the incident and his admission was also ignored. Further the enquiry was conducted in utter disregard of the Principles Of Natural Justice and was conducted without following due process of law. The findings are based on without reasons and upon surmises and conjectures. Considering all these grounds the complainant prayed for restraining respondents from giving effect to show cause notice of dismissal dated 11/08/2025.

7. Respondents filed their reply at Exh. C-7. According to them the complainant has made out a false story as the departmental enquiry was conducted by following the principles of natural justice

and as per D and A Procedure of the Corporation. According to them the charges leveled against the complainant are duly proved and the findings drawn by the enquiry officer are proper and not perverse. They contended that the complainant committed misconduct by not examining the availability of diesel in the bus when he was on duty. They contended that due to stoppage of the bus for non availability of diesel the passengers in the bus faced inconvenience and the image of the corporation was also maligned in the eyes of public and at the same time the corporation sustained economic loss for cancellation of Uran-Thane-Uran bus service on that day.

8. According to respondents in the departmental enquiry the complainant was allowed to represent him by the union representative to defend the case. He was allowed to secure the presence of witnesses to defend his case. He was given full opportunity to cross examine the witnesses. The enquiry officer has considered oral as well as documentary evidence brought before him. The respondents have reiterated the alleged facts of misconduct in their written statement and have contended that the complainant has committed misappropriation of amount.

9. According to respondents the charge sheet was served upon the complainant on 16/04/2025. He replied to the charge sheet. The departmental enquiry was conducted as per the principles of natural justice. The opportunity of being heard and to lead evidence was also given to him. Therefore, the findings recorded by the enquiry officer are not perverse. The complainant has caused loss

to the corporation and has been found guilty in the enquiry. Therefore, there is no *prima facie* case in his favor. On the other hand if the interim protection is given to the complainant it will cause irreparable loss to the corporation. The act of the complainant is serious in nature. If the complainant is continued in service he will indulge in similar act in future and will cause financial loss to the corporation.

10. The issues on Part I has been framed at Exh. O-3. I have recorded my findings thereon for the reasons stated below.

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the inquiry conducted against the complainant is fair and proper and in accordance with the principles of natural justice?	“Yes”
2. Whether the findings of the inquiry officer are perverse ?	“Yes”
3. What Order ?	As per final order

11. Learned advocates of both the sides advanced their arguments. Both the parties relied upon the departmental enquiry papers.

ISUUE NOS. 1 TO 3 (Collectively):-

12. All these issues are related to each other, therefore, for

the sake of brevity and convenience they are discussed together. The charge-sheet dated 16/04/2025 for alleged misconduct was served upon the complainant. It is a case of the complainant that when he was on Borivali Uran duty he asked Vehicle Supervisor Mr. Gonjari about diesel position in the bus and he had told him about sufficient availability of diesel. Therefore, he believed him and took the possession of bus and commenced his duty. He has not committed any negligence and misconduct alleged by the corporation. On the other hand the respondents contend that it was responsibility of the complainant to check the status of diesel in the bus, but he failed to take proper precaution and started his duty without checking the position of diesel. Therefore, the complainant has committed misconduct under Clause 10, 11, 22 and 57 of D and A Procedure of the Corporation, and therefore, the show cause notice of dismissal issued to him after finding him guilty in the enquiry is legal.

13. 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 characterised 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.

14. 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.

15. I have carefully gone through the proceedings of the matter. It is pertinent to note that the respondent corporation had issued a chargesheet to the complainant on 16/04/2025 and on the basis of same charges the enquiry was conducted against him and he was found responsible in the enquiry for the misconduct mentioned in the chargesheet and the Enquiry Officer gave opinion of stoppage of yearly increment for the period of six months and accordingly by

order dated 22/05/2025 the respondent imposed punishment on the complainant and his yearly increment for the period of six months was withheld. In fact after imposing punishment the respondent corporation should have closed the chapter but surprisingly the review order was passed on 04/08/2025 on the ground that the imposed punishment of one increment is not consistent with the misconduct committed by the complainant and again his enquiry was scheduled and he was asked to remain present for the same. However, no further enquiry was conducted and only the respondent asked the complainant to give his defence statement. Thereafter, on the basis of earlier enquiry conducted by the corporation and on the basis of which he was punished the show cause notice of dismissal was issued to him on 11/08/2025.

16. On careful perusal of the proceedings it can be gathered that the respondent had already imposed the punishment of stoppage of yearly increment for the period of six months on the complainant and still on the basis of same enquiry and same misconduct and same incident the new punishment of dismissal was proposed against him by virtue of review order dated 04/08/2025. In brief the complainant was punished twice for the same misconduct and for the same chargesheet which at first place violates his fundamental right guaranteed under the Constitution Of India. If the punishment of stoppage of increment of one year was lesser punishment imposed on him in light of the misconduct committed then the respondent should have initiated the fresh enquiry but it appears that the show cause

notice of dismissal was issued on the basis of same findings of the Enquiry Officer made on the basis of same enquiry proceedings. Therefore, in my opinion the proposed punishment of dismissal from service is against the Principles Of Natural Justice and Principles Of Equity.

17. The proceedings of departmental enquiry shows that the complainant before going on his duty on 07/04/2025 have asked Vehicle Supervisor Mr. Gonjari about the availability of diesel in the bus and on his assurance the complainant started the bus. Further it appears that on 07/04/2025 the complainant has made three trips from Uran-Thane and Uran-Borivali and he had halt at Borivali on the night of 07/04/2025. On 08/04/2025 in the morning he started his duty and when he reached at Kesar Mill Thane the bus was stopped for shortage of diesel. It has come in his statement that there was no facility available at Borivali station to measure the diesel in the bus. It is true that the complainant failed to check the availability of diesel before he went on to his duty. However, he believed the assurance of his senior Vehicle Supervisor Mr. Gonjari which he was not supposed to do at the first place. It was his personal responsibility to verify the diesel in the bus and then proceed with his duty. It appears that the complainant presumed certain facts without personally checking availability of diesel in the bus. The proceedings reveal that he had no such a intention to cause inconvenience to the respondents and the passengers.

18. If it is assumed that the complainant did not take proper care and caution by not examining the condition of the bus especially the availability of diesel in the bus before going on duty the imposition of punishment in the form of dismissal from service is certainly grave in nature and not warranted at all when his yearly increment for the period of six months has already been stopped for the same misconduct. Imposing the punishment of dismissal for the charges mentioned in the chargesheet when earlier punishment was in force is like using rights for the victimisation of the employee.

19. On bare perusal of the findings recorded by the enquiry officer it appears that he has not 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 perverse. On these grounds, if the finding recorded by enquiry Officer is looked into then it cannot be said that those are proper. Therefore, I hold that the findings recorded by enquiry officer are perverse. Consequently, I answer these issues accordingly and pass the following order.

ORDER

- 1) It is hereby held and declared that the enquiry conducted against the complainant is fair and proper and in accordance with the principles of natural justice.
- 2) The findings of enquiry Officer are perverse.
- 3) In the circumstances no order as to costs.

Alibag.
Date. 31/12/2025

(G. S. Hange)
Judge
Labour Court, Alibag-Raigad