

BEFORE THE JUDGE, LABOUR COURT
CHANDRAPUR.

Ref. Application No. 02/2020

(CNR NO.MHLC340000562020)

Kishor S/o. Wamanrao Bharati,
aged about 52 years, Occu- Nil,
R/o. Vivekanand Ward No. 21,
Gadchiroli.

.... Applicant.

-:- VERSUS -:-

1. Maharashtra State Road
Transport Corporation.
Through its Divisional Controller.
M.S.R.T.C., Chandrapur.
2. Maharashtra State Road
Transport Corporation, Chandrapur.
Through its Divisional Traffic
Superintendent,
MSRTC, Chandrapur.
3. Maharashtra State Road
Transport Corporation.
Through its Divisional Controller,
M. S. R. T. C., Gadchiroli.

.... Respondents.

CORAM :- Smt. R. V. Mete, Presiding Officer.

.....

Appearance :

Shri. M. M. Wankhade, Ld. Counsel for the applicant.

Shri. U. V. Deshpande, Ld. Counsel for the respondents.

ORDER ON PRELIMINARY ISSUE

(Passed on 02nd April, 2024)

This is an application under section 2-A read with section 2(ra) and Item- 5 of Schedule-V of the Industrial Disputes Act, 1947 (for short hereinafter referred to as 'I.D. Act') praying for quashing and setting aside impugned termination order dated 27.01.2012.

2] The brief facts of the present application are as under :

The applicant was appointed as conductor with the respondent corporation in the year 1992 and was attached to Gadchiroli depot. Respondent no.1 is the authority who issued impugned termination order and respondent no.2 is the appointing authority as well as divisional head. Respondent no. 3 is emerged and separated from Chandrapur division of MSRTC in the year 2014 and now, Gadchiroli division is having separate entity and therefore, applicant added respondent no.3 in the array of present application. Applicant is a 'workman' u/s 2(s) of the Industrial Disputes Act, 1947. Service record of complainant is clean and unblemished.

3] Applicant has been served with charge-sheet dated 28.07.2009 thereby alleging that he had used police motor warrant having seal and stamp of Police Inspector, Special Branch, Chandrapur during April, 2007 to November 2008 and thereby misappropriated the amount of Rs. 47,865/- of the

respondent corporation. It was further alleged that, when the respondent corporation verified the warrant then it was found to be forged and bogus. On these set of allegations various charges were levelled against the applicant under clauses 4, 11 & 15 of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation. Applicant replied the said chargesheet on 15.09.2009 and thereby denied all the charges levelled against him. Thereafter, respondent corporation initiated departmental enquiry against the complainant and after completion of enquiry issued termination order dated 27.01.2012 to the complainant.

4] Applicant after exhausting remedy under Industrial Disputes Act, 1947 issued an approach notice dated 27.09.2019 and thereby called upon the respondent corporation to withdraw the impugned termination order. Within stipulated period. As no action has been taken by the respondent corporation despite service of approach notice on 27.09.2019, the applicant constrained to approach to the Conciliation Authority, Chandrapur by filing application under section 1-A of the Industrial Disputes Act, 1947 on 27.12.2019. As no settlement took place between the parties before the conciliation officer, the applicant filed this application directly before this court after expiry of 45 days from the date of filing application u/s 2-A of the I. D. Act.

The enquiry conducted against the applicant is not fair, proper and in accordance with the principles of natural justice.

5] It is further submitted that the entire case of respondent corporation is based upon the report of police authority, who

verify the warrant. But when the applicant was discharging his duty on the schedule at that time police officer has used this warrant in the bus, who was in uniform and it also bears seal of concerned police station. Therefore, there was no option left with the applicant to deny the said warrant. Hence, there was no fault on the part of applicant.

6] The respondents have shown favoritism while awarding punishment of termination upon the applicant. The respondents have issued minor punishment to the other employees who are also involved in the similar nature of misconduct. Impugned termination order is illegal, arbitrary and capricious one. For all these reasons, he has contended that the impugned dismissal order is not based on the factual position and that the enquiry conducted against him is not fair and proper and the findings of enquiry officer are also perverse. So, he has prayed to give affirmative finding on the issue no.1 and 2.

7] The respondents have resisted the application of applicant by filing written statement at Exh. C-7 and denied all adverse allegations made against them. Respondent denied that applicant was appointed as conductor with them in the year 1992 and was attached to Gadchiroli depot. Respondents also denied that service record of complainant was clean and unblemished.

8] Respondents have submitted that present application is not tenable in the eyes of law. It is further submitted by the respondents that applicant was appointed as conductor by the respondent corporation. It is further submitted that the applicant had used police motor warrant having seal and stamp

of Police Inspector, Special Branch, Chandrapur during April, 2007 to November 2008 and thereby misappropriated amount of Rs. 47,865/- of the respondent corporation. Respondent corporation verified that warrant and found that it was forged one. Applicant was served with charge-sheet dated 28.07.2009 leveling charges against him. Applicant replied the said charge-sheet on 15.09.2009. Respondent issued charge-sheet to the complainant and conducted fair departmental enquiry against the complainant. The complainant participated in the enquiry and filed his reply. After that enquiry officers founded that the charges upon the complainant of misappropriation of the amount of corporation is duly proved against complainant. Thereafter, respondents issued termination order to the complainant on 27.02.2012 and there by terminated the complainant from service. The enquiry officers has been followed the principle of natural justice and conducted the fair and impartially departmental enquiry against the complainant. The enquiry officers have appreciated that complainant was committed a serious misconduct and misappropriation of the amounts. Therefore, the termination order issued to the complainant is proper.. therefore, now complainant asking for the main relief is not tenable. It is submitted that complainant has given fair and proper opportunity to defend in the enquiry and there by principle of natural justice was followed and thus enquiry conducted by the respondent is legal fair and proper and findings drawn by the respondent is absolutely on the basis of material available in the enauiry. For these reasons, they have prayed to give negative finding on issue no. 1 and 2.

9] In view of the rival pleadings of parties, issues came to be framed at Ex.O-1 out of which issues nos.1 and 2 are treated

as preliminary issues. Those are reproduced below with my finding thereon for the reasons stated thereunder.

ISSUES

FINDINGS

- 1) Does complainant prove that : In the affirmative. enquiry conducted against him is not fair, proper and in violation of principles of natural justice ?

- 2) Does the complainant prove that : In the affirmative. the findings of enquiry officer are perverse ?

REASONS

10] I have heard Shri M. M. Wankhade Counsel of the complainant and Shri U. V. Deshpande learned counsel for respondents.

11] The complainant has placed on record the copy of receipt, copy of charge sheet, copy of report, statement of complainant, statement of complainant, confidential report, reply to additional charge-sheet, copy of enquiry proceeding, copy of finding, dismissal order, recovery order along with list Exh.U-2. Both the parties have relied upon these documents as per their convenience.

AS TO ISSUE NO.1 :-

12] Issue no.1 relates to – whether enquiry conducted by respondents against complainant is fair, proper and according to the principles of natural justice or not. There is no dispute

regarding the fact that complainant is the employee of respondents. It is undisputed fact that departmental enquiry was held against complainant and complainant had participated in the enquiry.

13] Perusal of Enquiry proceeding shows that respondents had examined their only one witness in the enquiry and he is reporting officer – Shri S. N. Dhamgame. Evidence of complainant was also recorded in the enquiry.

14] Perusal of enquiry proceeding and relevant documents of enquiry show that inquiry officer himself had acted as prosecutor. In the judgment reported in – ***State of Uttar Pradesh and others -vs- Saroj kumar Sinha (2010)2 SCC – 772***, it is observed that inquiry officer is not supposed to be representative of department/disciplinary authority/Government. But such principle is not followed by inquiry officer in present case in hand and consequently complainant is seriously prejudiced.

15] Furthermore, enquiry proceeding further discloses that whatever incriminating material has been brought in the evidence of reporting officer and relevant documents on which management of respondents was placing their strong reliance for proving misconduct against complainant, those material were not put to the complainant for calling his explanation. The rule of natural justice is that domestic inquiry officer shall not rely upon any material which is not put to the delinquent workman against whom the enquiry is held. But record shows that said principle of natural justice in this regard is violated in enquiry.

16] Furthermore, complainant was not asked by inquiry officer whether he wanted to examine any defence witness. Therefore, it cannot be stated that proper opportunity was given to complainant to defend enquiry. Consequently, it can be held that principles of natural justice were not followed.

17] Learned Counsel of complainant has argued that though various reports were called by respondents from concerned police authority about those police motor warrants, those documents were not provided to the complainant in the enquiry. Learned Counsel of respondents could not point out any acknowledgment of complainant regarding receipt of those documents. Thus, it appears that no entire documents were provided to the complainant in the enquiry. Therefore, in view of this, there appears to be substance in the case of complainant that no proper opportunity was given to him to defend enquiry and enquiry was not conducted fairly.

18] For all the reasons stated here-in-above, I hold that enquiry was not really conducted fairly, properly and according to the principles of natural justice. As such, in view of this, I hold that issue no.1 is proved. Hence, it is answered in the affirmative.

AS TO ISSUE NO.2 :-

19] The question is whether findings recorded by inquiry officer are perverse. Further question also arises that whether they are based on the evidence available before inquiry officer. On perusal of findings recorded by inquiry officer, it is found

that he had observed that all charges (i. e. clause 4, 11 and 15 of Schedule 'A' of Discipline and Appeal Procedure of MSRTC) levelled in the charge-sheet are proved against complainant.

20] Learned Counsel of complainant has argued that in enquiry there was no reliable evidence to prove the alleged misconduct against complainant. He further argued that while recording findings by the inquiry officer, he did not consider evidence available in the enquiry, defence taken by complainant in enquiry and in the reply filed to charge-sheet. Therefore, findings recorded by him are perverse. Learned Counsel of respondents have opposed such argument.

21] Perusal of enquiry proceeding shows that no specific charges were framed by inquiry officer against delinquent complainant regarding alleged misconduct during enquiry. Framing of charge is material stage in the enquiry. But, when enquiry proceeding does not disclose that any charge was framed against complainant regarding alleged misconduct, then under such circumstances, it was not possible for complainant to defend enquiry properly.

22] Learned Counsel of complainant has pointed out from charge-sheet that vague allegations were made against him in the charge-sheet and they were not specific one. Learned Counsel of respondents have opposed it. Perusal of charge-sheet, it is found that no specific details were provided in the charge-sheet on which particular dates, those alleged 112 police motor warrants were allegedly used by the complainant. No detail particulars were provided in the charge-sheet on which date, allegedly how much alleged amount was misappropriated

by the complainant. Under such facts and circumstances, it was not possible for complainant to defend enquiry properly.

23] Learned Counsel of respondents during course of argument have pointed out report which was called from concerned police authority. Thereafter, he argued that such report itself shows that alleged 112 police motor warrants were bogus one and they were not issued by those concerned authorities. Against this, learned Counsel of complainant has argued that the contents of such report was not proved in the enquiry by examining concerned police officer. Perusal of enquiry papers show that during enquiry only reporting officer of MSRTC was examined. Except him, no other witness was examined on behalf of management of respondents. Therefore in such circumstances, there appears to be substance in the submission of learned Counsel of complainant, on the point that there was no sufficient evidence in enquiry against complainant in enquiry.

24] Complainant appears to have submitted reply to the charge-sheet wherein he explained that at that relevant time, concerned police had shown police motor warrants which were in prescribed form and they were bearing round seal and signature of concerned authority. Therefore, he believed on those alleged motor police warrants. He further explained that he was not able to identify whether those warrants were bogus or genuine one. Prima facie, there appears to be substance in such defence of complainant. Because during course of his duty, it was not possible for complainant first to verify from concerned police station authority who had issued those

warrants and thereafter allow the concerned police official to travel by bus. Whether documents are bogus or not, they can be ascertained only on the basis of analysis of examination of documents through the expert or from concerned authority who had allegedly issued those motor police warrants. Therefore in view of this, there appears to be substance in the reply of complainant. But, said aspect appears to have not been considered by inquiry officer and therefore findings recorded by him cannot be stated to be legal one.

25] Furthermore, in enquiry complainant has deposed that after receipt of police motor warrants from concerned police officer, he had issued fare tickets to them. Thereafter, he had submitted those warrants in the account section of MSRTC. Amount of such fare tickets were demanded from concerned office of police authority. According to complainant, MSRTC might have received fare amount in respect of passengers who had travelled on the basis of police motor warrants. It is to be noted that such contention of complainant was not challenged from the side of respondents in the enquiry. Therefore, it remains unchallenged. Under such circumstances, inquiry officer ought to have relied upon such contention of complainant. But, such material aspect was not considered by inquiry officer.

26] From this it is also made clear that the passengers who had travelled on the basis of police motor warrants, they did not pay fare amount directly to the complainant. It appears that after sending those police motor warrants to the concerned police authority, fare amount was used to be recovered from

them subsequently. Therefore, under such facts and circumstances, it cannot be believed that complainant had misappropriated alleged amount of MSRTC as mentioned in the charge-sheet. Such aspect was not considered by inquiry officer. Consequently, findings recorded by him cannot be stated to be based on evidence available before him.

27] On the basis of pleading and enquiry proceeding, complainant has satisfactorily shown that only on the basis of inadmissible evidence, in the absence of reliable evidence and on assumptions of inquiry officer, findings were recorded by inquiry officer against him, which are not according to the law.

28] Furthermore, while determining issue no.1, it is already held that enquiry was not conducted fairly, properly and principles of natural justice were not followed, then in such circumstances, findings recorded by inquiry officer in such type of enquiry cannot be stated to be legal one.

29] Sum and substance of above made discussion is that inquiry officer has not recorded his findings on the basis of evidence and facts and circumstances available before him. As such, for all these reasons, I infer that findings recorded by inquiry officer are not based on evidence before him and same are not according to law. Therefore, I hold that same are perverse. Consequently, issue no.2 is proved. Hence, it is answered in the affirmative. Due to this and in view of findings given to issue no.1, enquiry is held to be vitiated.

In view of findings recorded to above issues, I proceed to pass the following order :-

ORDER

1. It is hereby declared that enquiry conducted against complainant was not according to the law, it was not conducted in fair and proper manner. In enquiry, principles of natural justice were not followed.

2. It is hereby declared that the findings of the enquiry officer are perverse.

Sd/-

(Smt. R. V. Mete)

Judge

Labour Court, Chandrapur.

CHANDRAPUR.

Date :- 02.04.2024.