

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by A. D. Tidke)

Complaint (ULP) No. 21/2024
(CNR N0.MHLC340000612024)

Shamal Kartik Mandal
Age: 52 Years, Occu: Service.
R/o. Krsihna Nagar, Mul Road,
Chandrapur.
Tq: & Dist :Chandrapur.

.... Complainant.**-:- VERSUS -:-**

1. Maharashtra State Road Transport Corporation, Gadchiroli, Division Gadchiroli
Through its Divisional Controller,
2. The Divisional Traffic Officer of MSRT Corporation, Gadchiroli

Office of both at Near Bus Stand, Gadchiroli,
Tq: & Dist: Gadchiroli.

... Respondents.**Appearance :-**

Shri. V.M. Shikare Ld. Counsel for the Complainant.

Shri. U. V. Deshpande Ld. Adv. for the Respondents.

ORDER ON PRELIMINARY ISSUES(Passed on 21st January, 2026)

This is a complaint filed by the complainant under Section 28 Schedule-IV Item-1 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 (for short hereinafter referred to as 'MRTU & PULP Act') for seeking declaration of unfair labour practice and to desist the respondents from committing such act of unfair labour practice, and for quashing and setting aside impugned show cause notice of dismissal dated 30.01.2024 and to restrain the respondents permanently from taking action of dismissal against the complainant on the basis of impugned show cause notice dated 30.01.2024

The Complainant's submission in short as follows.

02] The complainant is a bus driver working with the respondent corporation from year 2006 with unblemished past service record. The respondent no.1 is the representative of MSRT Corporation for Gadchiroli Division, and also the appointing authority of the Complainant. The respondent no.2 is the authority who has acted as Disciplinary Authority and Enquiry Officer in the instant matter and who has issued impugned show cause notice of dismissal to the complainant on 30.01.2024.

03] It is further alleged that allegations are made against the complainant under clauses 11,15 and 45 of Schedule 'A' of the Discipline and Appeal Procedure of MSRT Corporation. The Discipline and Appeal Procedure is hereinafter referred to as D & A Procedure for the sake of brevity. The allegations that are made against the Complainant are based on the facts, that on 02.07.2012, when the Complainant was performing his scheduled duty on Aheri to Gadchiroli route on Bus No. MH-40 N-9513, while alighting passengers at Yenapur

Bus stop and while starting the Bus, one pedestrian who was running and crossing the Bus from front side to enter the Bus, was given dashed from front right side of the Bus, and died while undergoing treatment in the Hospital.

04] It is further submitted that the enquiry conducted against the complainant was not fair and proper. It has been submitted that Enquiry Officer and Disciplinary Authority is one and the same person as well as Enquiry Officer has acted as a prosecutor. The Enquiry officer has not called material witnesses and documents during the course of enquiry. The findings drawn by Enquiry officer are perverse. The charges levelled against the Complainant are shown proved against the Complainant by applying colourable exercise of power by the respondents. The Enquiry was conducted against the Complainant on 05.03.2020, and the show cause notice is issued on 30.01.2024 i.e after completion of near about four year.

05] It is further submitted that the proposed punishment of dismissal is also shockingly disproportionate. The punishment of dismissal is also not proposed in the D & A Procedure of Corporation for charges levelled against the complainant in the instant case. In the above facts and circumstances of the case, it submitted that enquiry conducted against the complainant is not done by following principle of natural justice and the same be vitiated. It is also submitted that the findings recorded by the enquiry officer are perverse. As such, the complainant has prayed for declaration that the enquiry is not fair and proper and the same be vitiated. It is also prayed to declare that the findings recorded by the enquiry officer are perverse.

Respondent's submission in short.

06] It is not disputed that the complainant has been working as a driver with the respondent corporation. Whatever allegations are made in the complaint and application at exhibit U-2 by the Complainant, that all allegations are denied by the respondents. The respondents have specifically submitted that the complaint as framed and filed are not tenable in the eyes of law or on facts. The Complainant is not entitled for any relief as per prayer clause.

07] It is further submitted that the Complainant was appointed by as a driver by the respondent. It is further submitted that the complainant was issued charge sheet on 08.01.2013, and a fair departmental enquiry is conducted against the complainant. The complainant has participated in the departmental proceeding. After that the Enquiry Officer found that the charges against the Complainant are duly proved after conduct of fair enquiry. Thereafter, the respondents have issued show cause notice of dismissal to the Complainant on 30.01.2024 and thereby decided to dismiss the Complainant from service.

08] The Enquiry Officer has followed principle of natural justice and conducted fair and impartial departmental proceeding against the Complainant. The Enquiry Officer has appreciated that the Complainant has committed serious misconduct and it amount to dismiss from his service is legal and correct one. Findings drawn by the Enquiry Officer are absolutely based on record available before the Enquiry Officer. With these contentions, the respondents have prayed for declaration that enquiry conducted against the complainant be declared as fair and

proper and done in accordance with the principle of natural justice and findings are legal and proper.

09] Considering rival pleading of the parties, I have framed total eight issues, out of which issue nos.1 and 2 are treated as preliminary issues. The said pre issues are reproduced below as it is and I have recorded my findings against each of them for the reasons given below: -

POINTS

FINDINGS

- | | |
|--|----------|
| 1) Whether the complainant proves that the:
enquiry conducted against him is unfair,
illegal and in violation of the principle of
natural justice ? | In the. |
| 2) Whether the complainant proves that:
findings recorded by the enquiry officer
are perverse ? | In the . |

REASONS

AS TO ISSUE NOS. 01 AND 02 :-

10] It is undisputed fact that the Complainant has been working as a driver with the respondent corporation. It is also not disputed that Enquiry has been conducted against the Complainant and impugned show cause notice of dismissal dated 30.01.2024 has been issued to him. The Complainant has alleged that the respondents have engaged themselves in unfair Labour practices by issuing such show cause notice of dismissal. It is also pertinent to note that the departmental proceeding

has been challenged on various grounds alleging that the respondents have not given fair and proper opportunity to him and thereby violated the principal of natural justice.

11] It is settled position of law that while deciding pre-issues as regards to the departmental proceeding, the Court has to taken in to consideration enquiry proceeding conducted against the delinquent and the Court cannot travel beyond enquiry proceeding. The respondents have not produced on record original proceeding, but the complainant has produced on record all documents at exhibit U-3 which forms part and parcel of the enquiry proceeding. The Ld. Representative appearing for the complainant and the Ld. Advocate for the respondents have submitted the said documents being part and parcel of enquiry proceeding can be taken in to consideration while deciding preliminary issues.

12] The complainant has produced on record various documents along with exhibit U-3 i.e Copy of charge sheet dated 08.01.2013 issued by respondent no.2 , copy of report dated 07.07.2012, copy of accident report dated 02.07.2012, copy of FIR registered with Police Station dated 02.07.2012, copy of sketch of place of accident prepared by Reporter dated 02.07.2012, copy of reply filed by the Complainant against the charge sheet dated 25.01.2013, copy of enquiry proceeding dated 05.03.2020, copy of findings drawn by the Enquiry Officer dated 05.03.2020 and copy of impugned show cause notice dated 30.01.2024 issued by the respondent Corporation.

13] After going through the oral submissions of the parties as well as documentary evidence on record, it prima facie appears that the

alleged incident on the basis of which charge sheet is issued to the Complainant is dated 02.07.2012. However, the impugned show cause notice of dismissal is issued on 30.01.2024. If the date of the incident and the date of issuing show cause notice of dismissal are compared, then it finds that there is near about gap of 12 years. On going through the record of enquiry proceeding, it appears that confidential report about the incident of accident as well as report of the of accident was prepared on 07.07.2013 by the concern officer. The charge sheet in respect of allegations made was also prepared on 08.01.2013. It also appears from the record that reply to the charge sheet was given by the complainant on 25.01.2013. However, after that the respondents have taken or spent near about seven years period to commence inquiry against the complainant. The record clearly goes to show that statement of the reporter as well as complainant came to be recorded in Enquiry proceeding on 05.03.2020, and thereafter, findings were recorded by Enquiry Officer on 30.01.2024 and show cause notice of dismissal came to be issued on the same day.

14] There is nothing on record to explain that why there was gap of so many years to commence evidence in enquiry proceeding and to record finding. It is seen from the record that on the basis of alleged incident criminal prosecution is initiated against the complainant by way of registration of FIR with Charmoshi Police Station on 02.07.2012. It has been alleged that the Complainant being the ST Bus driver, drove the bus either rashly or negligently and thereby gave dash to the pedestrian resulting in his death. No doubt, offence under section 279 and 304A of IPC are registered against the Complainant.

15] On going through the findings recorded by the Enquiry

Officer, nowhere, it is mentioned that for what reason there was such long delay for conducting enquiry proceeding. It is not the case that the enquiry officer was waiting for the result of the criminal prosecution initiated against the Complainant. What happened with the criminal prosecution initiated against the Complainant, whether it is still pending or decided by the Court, there is nothing on record to put light on that aspect. As such, delay in conducting enquiry against the Complainant is not satisfactorily explain on record which prima facie amount colorable exercise of power at the instance of the respondent corporation.

16] It appears from the charge sheet that allegations are made against the Complainant under clauses 11,15 and 45 of old D & A Procedure. It appears that clause 11 deals with negligent conduct of the employee causing loss to the Corporation or inconvenience to the Public. Further, clause 15 speaks of negligent conduct causing loss to the work, vehicle or property of the Corporation. Moreover clause 45 is regarding contravention of security instruction proclaimed by the Corporation.

17] The facts as set out in the charge are that on 02.07.2012, while the Complainant being driver of the Bus No. MH 40 N 9513 after alighting passengers and while driving the bus to leave from the stop, one pedestrian was running from the right front side of the bus trying to cross the Bus to get in, at that time, dash of the front right side of the Bus was given to the pedestrian who was taken to the Hospital but died while undergoing medical treatment. These are facts on which charges have been levelled against the Complainant under clause 11,15 and 45 of D & A Procedure of the MSRTC. As seen from the facts stated in the charge sheet, the accident occurred when the Bus was about to leave from the

spot. It is also prima facie seen from the charges levelled that the deceased passenger was trying to cross the Bus to get in it.

18] It is clear from the facts and charges levelled against the Complainant that the criminal prosecution initiated against the Complainant is about negligent driving of the Bus. The charges levelled itself shows that the act is not committed with an intention to commit said act to yield such result. It is worth to note that the Reporter in his report dated 07.07.2012 has given opinion that the alleged accident could not have taken place, if the Complainant would have seen the right side of the Bus before taking it forward. Thus, the alleged negligence is that while taking the bus forward, the complainant being the driver of the bus did not see towards the right front side of bus and taken it forward and thereby given dash. While recording such opinion by the Reporter, there should be statement of any witness to show and substantiate the said fact. The enquiry proceeding does find any such statement of the witness throwing light on the actual scene of the occurrence of the incident.

18] No doubt, in enquiry proceeding the proof of a fact is based on probable evidence and it is not required to prove the guilt beyond reasonable doubt. It is quite clear that FIR has been registered and criminal prosecution has been initiated but none of the party disclosed whether it is pending or decided. It is seen from the enquiry proceeding that the enquiry officer has examined only the reporter and recorded finding on the basis of statement made by the report during enquiry. It is quite clear from the record that the reporter was not present on the spot when the accident occurred. The report deposed before enquiry officer that the complainant drove the Bus without looking towards the right side

of the Bus while moving from the spot, and therefore, accident occurred. Admittedly, the reporter was not present on the spot, the testimony of reporter is hearsay in nature so far allegation of negligence made against the complainant is concern.

19] The Reporter also deposed during his statement that when he made enquiry of the accident at the spot of accident, he got information that the deceased Peddler was trying to cross the Bus from the front side to get in to the Bus. This statement of the reporter though taken in to consideration, it appears to be hearsay which will have no evidentiary value in the eyes of law. On the basis of hearsay evidence of the reporter, it cannot be said that complainant committed negligence while driving the Bus. In the said facts and circumstances, I am of the considered opinion that in order to get proper proof of the fact of negligence on record, the enquiry officer ought to have examined the witness who has seen the accident with his own eyes. However, no such witness has been examined. It appears that there was no evidence of the witness before enquiry officer who has seen the accident with his own eyes, therefore, conclusion of negligence and alleged misconduct on part of the complainant drawn by the enquiry officer is not based on the facts and evidence available on record.

20] It is also prima facie seen from the record of enquiry proceeding that the enquiry officer has put question to the delinquent complainant as a prosecutor. The enquiry officer has put leading question to the delinquent during his examination in order to bring admission as to material facts on record. The Enquiry officer has put question to the delinquent that, whether it is true that after the passenger

got down from the Bus, while the Bus proceeding further at 20.45 hours one Peddler who was crossing the road met with an accident and sustained grievous injury? This is purely a leading question which definitely cause prejudice the rights of the delinquent. It is also clear from the findings recorded by the enquiry officer that there are no attending circumstances of the spot on record available before the enquiry officer through the mouth of any witness.

21] Thus, considering the overall facts and circumstances as seen from the record available before this Court, I am of the considered opinion that the enquiry officer has not followed the principle of natural justice. Moreover, findings recorded by the enquiry officer are also not based on material available on record before him during the course of enquiry. As such, I answer issue nos. 1 and 2 in the affirmative and pass following order.

ORDER

- 1) It is hereby declared that the enquiry proceeding conducted against the complainant is not conducted by following the principle of natural justice and the same stands vitiated.
- 2) It is hereby declared that findings recorded by the enquiry officer are perverse.
- 3) The respondents have reserved their rights to lead evidence to prove the misconduct, therefore, the respondent is directed to lead evidence, the complainant would have opportunity to lead evidence in rebuttal.

Place; Chandrapur.
Date :- 21.01.2026.

(A. D. Tidke)
Judge
Labour Court, Chandrapur.