

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**Complaint (ULP) No. 42/2023**

(CNR NO.MHLC340002292023)

Exh. O-04

Liladhar S/o. Prabhakar Deshmukh,
Aged about- 48 years, Occ. Nil
R/o. Sushila Apartment, Ganesh Colony,
Sangam Road , Wandongari, Hingana
Dist: Nagpur.

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

01. Maharashtra State Road
Transport Corporation,
Through its Depot Manager,
M.S.R.T.C Chandrapur.
02. Maharashtra State Road
Transport Corporation.
Through it's Divisional Controller,
M.S.R.T.C, Chandrapur.

..... Respondents.**CORAM :-Shri. A. D. Tidke, Judge.**

Appearance : Shri. S. M. Wankhade, Ld. Adv. for the
complainant.
Shri. U. V. Deshpande, Ld. Adv. for the
respondents.

ORDER ON PRELIMINARY ISSUE

(Passed on 05.08.2025)

This is a complaint filed under Section 28 read with
Item 1 of Schedule IV of the Maharashtra Recognition of Trade
Unions & Prevention of Unfair Labour Practices Act, 1971 (here-

in-after referred to as “MRTU & PULP Act” for the sake of brevity)

02] **Facts in brief of the case of the complaint are as under :**

The present complaint has been filed by the complainant alleging himself to be the workmen of the respondent in the capacity of driver challenging his order of termination passed by respondent no.2 on 31.07.2023.

03] The complainant was appointed in the year 2011 as driver by the respondent corporation and at the time of passing of his dismissal order, he was working at Chandrapur Depot. The respondent no. 1 is the authority which issued impugned dismissal order though not competent to do so and respondent no.2 is the appointing authority and Divisional head. The service record of the complainant is absolutely clean and unblemished.

04] The complainant has been served with the charge sheet dated 05.04.2023 thereby alleging that the complainant remains absent on duty from 05.09.2021 to till 16.03.2021 without prior permission of superior officer. It is alleged that the respondent corporation have sustained monetary loss amounting to rupees 17,96,250/- as some schedules were delayed and some were cancelled. The respondent corporation sent other driver on overtime basis to complete schedule and it also caused inconvenience to the passenger. Thus, allegations are alleged to have made against the complainant in terms of clauses 10,11,22 and 35 of Discipline and Appeal Procedure of

M.S.R.T.C.

05] The complainant has denied charges levelled against him by filing reply to the charge sheet and factual position was brought to the notice of the respondent but without considering submission of the complainant, the respondents directly initiate inquiry against the complainant without waiting for the complainant to defend his case. The impugned dismissal order also came to be issued at the instance of the respondent which has been challenged on various grounds enumerated below.

06] The respondent corporation conducted inquiry ex-parte behind back of the complainant without serving copy of notice to the complainant about initiation of inquiry against him. There is no single document on record to show that the complainant caused loss to the respondent corporation amounting to rupees 17,96,250/-. No details have been given that how many times schedule of the bus was cancelled and on how many occasions the other driver was sent on overtime to complete schedule of the bus. The corporation has alternative arrangement of daily rated employees to complete schedule of the bus round in case if any driver remains absent from duty. There is nothing on record to prove charge under clause 11 of D. and A. Rules against the complainant.

07] It is further submitted that the respondent failed to consider documents filed on record by the complainant. The complainant had already filed leave application along with medical certificate at the time of proceeding on leave but the same are not taken into consideration by the inquiry officer.

That the inquiry officer has not recorded a reasoned finding about how charges are proved in the inquiry but a direct conclusion has been drawn that charges are proved. That the respondent failed to consider the back service record of the complainant which is absolutely clean and unblemished and no such similar misconduct found in the entire service. As such the respondents acted contrary to the mandatory provisions of their own rules and regulations laid down under clause 6 B of D.A. Rules. On the basis of aforesaid contentions, the Complainant has alleged that the inquiry conducted against the complainant is against the principle of natural justice and vitiated and findings recorded by the inquiry officer are perverse. On these grounds, the complainant has prayed for a declaration that the enquiry conducted against the complainant is not legal, fair, proper and according to the principles of natural justice, and that the findings recorded by the enquiry officer are perverse.

Respondent's case in short as follows.

08] The respondent corporation has resisted the claim of the complainant by filing a reply at (Exh. C-03) and categorically denied all adverse allegations levelled against them. Respondents have specifically contended that the complaint as framed and filed by the complainant is itself not tenable in the eyes of law or facts. That the complainant was appointed as a driver by the respondents. The complainant used to remain absent from duty intentionally and habitually. That a charge sheet dated 05.04.2023 has been issued to the complainant and a fair departmental inquiry is conducted against him. The complainant participated in the departmental proceeding and

filed reply before the authority which was headed by the respondent. After that, inquiry officer has founded that the charge upon the complainant is duly proved. Thereafter, respondent was issued show cause notice of dismissal on 31.07.2023 and thereby decided to dismiss the complainant from service.

09] That the inquiry officer has followed the principle of natural justice and conducted inquiry in fair and impartial manner. The inquiry officer has appreciated that the complainant has committed serious misconduct and negligence in discharging his duties and thereby caused monetary loss to the respondent corporation. The complainant has been given fair and proper opportunity by following principle of natural justice and findings drawn by the inquiry officer are based on the record available in the departmental inquiry. No such perversity as alleged by the complainant has been done against the complainant. On these grounds, the respondent corporation has prayed for declaration that the enquiry conducted against the complainant is fair, proper and according to the principles of natural justice and that the findings recorded by the enquiry officer are just and legal, not perverse.

10] In view of the rival pleadings of the parties, my the then Ld. Predecessor has framed issues below (Exh.O-02), out of which issue nos.1 and 2 are treated as preliminary issues. Those are reproduced below with my findings thereon for the reasons stated hereinafter.

ISSUES**FINDINGS**

- 1) Does complainant prove that enquiry : In the affirmative. was conducted against him in violation of principles of natural justice and is vitiated?
- 2) Does the complainant prove that the : In the affirmative. findings recorded by enquiry officer are perverse?

REASONS

11] I have heard Shri. M.M. Wankhede learned advocate for the complainant and Shri. U. V. Deshpande, learned advocate for the respondent's corporation.

12] The complainant relied on the copy of termination order of the complainant dated 31.07.2023. Beside respondent corporation has relied on dismissal order of the complainant as well as charge sheet dated 05.08.2023, copy of letter dated 16.03.2023 issued by the head of the S.T. Depot Chandrapur along with absentee sheet of the complainant, copy of show cause notice dated 20.06.2023 given to the complainant by the Competent Authority/ Inquiry Officer to the complainant, copy of findings recorded by the Inquiry officer in the departmental proceeding dated 05.08.2023, copy of notice sent to the complainant dated 20.07.2023, copy internet track report dated 27.07.2023, copy of questions put by inquiry officer to the complainant dated 10.07.2023.

AS TO ISSUE NOS.1 & 2

13] Both these issues are closely related with each other, therefore, those have been taken up for consideration together to

avoid repetition of the discussion of evidence available on record. While determining whether the enquiry is fair and proper, the Court has to see whether the enquiry was conducted adhering to the principles of natural justice, service conditions rules, whether proper opportunity of defending the enquiry was given to the complainant or not, whether the enquiry was impartial, transparent or not. Keeping in mind this legal position, the evidence needs to be discussed.

14] It would be worth mentioning here that the complainant has alleged that the inquiry conducted against him is arbitrary and the principle of natural justice has not been followed. The complainant also challenged the finding recorded by inquiry officer by alleging it to be illegal and perverse. Thus, considering allegation made by the complainant, it is necessary appreciate the documents and evidence available on record to determine, whether there is substance in the submission of the complainant.

15] The counsel for the complainant argued that the enquiry conducted against the complainant was against the principles of natural justice. The first and foremost stand taken by the complainant is that the inquiry is conducted behind his back and the respondents even did not take care to serve copy of notice to the complainant about fixation of inquiry. So far reply of the respondent corporation is concerned, it is silent in that regard. Now the question is, whether prior notice before fixation of inquiry is must in the eyes of law. It is worth to mention here no law mandate that the departmental inquiry cannot be initiated without giving notice of fixation of

departmental inquiry. Even if it is accepted that no prior notice has been given prior to initiation of inquiry will not go to the root of the matter. What is required for initiation of departmental proceeding is supplying copy of charge sheet in respect of charges levelled against the delinquent. There is nothing on record to show that the copy of charge sheet dated 05.04.2023 was served on the delinquent/complainant. Neither the complainant nor the respondents put light on the aspect, whether charge was supplied to the complainant or not. However, the record relating inquiry proceeding before the Court nowhere disclosed that the copy of charge was served on the complainant. It goes to show that the very base of the initiation of the departmental proceeding is not complied with by serving copy of charge on the delinquent.

16] Further, serious allegation is raised that inquiry proceeding conducted against the complainant ex-parte. On perusal of inquiry proceeding, it clearly appears that inquiry is conducted against the complainant in his absence and without giving opportunity to defend. On perusal of proceeding of the departmental inquiry dated 10.07.2023, it appears that the inquiry officer has noted that charge was served on the delinquent as per letter dated 05.04.2023 by registered post and reply to the charge has been given by the complainant by registered post 25.05.2023. It is worth to note here that no postal receipts or acknowledgment of the serving of charge upon the complainant is find place in the documents of inquiry proceeding filed by the respondent corporation before the Court.

17] It is also mentioned in the inquiry proceeding dated

10.07.2023 that the complainant has given reply to the charge but the copy of the same is not filed on record by the respondent. It is also noted in the said proceeding that time to time thrice notice of inquiry was given to the complainant but he remains absent for the same. There is also nothing in record to substantiate the contention of the respondent to show that notice of hearing was given to him thrice. If such notice was given as alleged by the respondent corporation, the acknowledgment of the notice in person signed by the complainant should have been filed on record of the case but in vain. Not a single document is on record except noting on the proceeding to show that notice of hearing was given to the complainant time to time.

18] The perusal of record and proceeding show that one internet tract consignment is filed on record by the respondent which shows that the said item was booked on 20.07.2023 and the same appears to have been delivered to the addressee on 27.07.2023. If the letter dated 20.07.2023 filed on record by the respondent is perused, it reveals that it show cause notice calling explanation of the complainant after completion of departmental inquiry that why he shall not dismiss from the service. Even if it is accepted that notice dated 20.07.2023 was duly served, still the question of initiation and conducting of departmental inquiry against the complainant in his absence, remain unanswered, because there is nothing on record to show notice of hearing and opportunity as alleged by the respondent corporation was given to him.

19] Now coming to the merits of the allegations and finding recorded by inquiry officer, it is necessary to see, whether findings recorded are based on record. Allegations are made against the complainant under clause 10,11,22 and 35 of D.A Rules of the corporation. On considering dismissal order dated 31.07.2023, it appears that inquiry officer concluded that allegation against the complainant in respect of clause 10,11 and 35 are proved. Charge under clause 10 is about indiscipline behavior and under clause 11 is of negligent behavior causing loss to the corporation and inconvenience to the public. Whereas charge under clause 35 is regarding regular absence without obtaining leave on just reason without obtaining prior sanction of leave.

20] The Inquiry officer has recorded deposition and statement of the sole witness Hemant Kumar D Govardhan who is head of Bus Depot Chandrapur Bus Depot as well as reporting officer in the present matter. The report in respect of alleged misconduct has been submitted by the reporting officer to the Inquiry officer on 17.03.2023. it has been alleged in the report that the complainant remains absent without permission on his duty from 05.09.2021 to till 16.03.2023 and a result of the same inconvenience cause to the public and image of corporation was malign in the public. It is further alleged in the report due to absence of the complainant huge loss approximately amounting to rupees 17,96,250/- is caused to the corporation due to such conduct of the complainant.

21] It is worth to note here that show cause notice of dismissal and order of dismissal differs about the proof of allegations made against the accused. It has been mentioned in show cause notice that charges made against the complainant under clause 10, 11, 22 and 35 are proved but dismissal order is silent about proof of charge under clause 22 of the D.A. Rules of the Corporation. While considering the question of loss caused to the corporation, mere statement that approximate loss of rupees 17,96,250/- is caused to the corporation is not sufficient. There are no particulars on record to come to just and proper finding that the complainant caused loss to the corporation.

22] It is further pertinent to note that reply to the charge was given by the complainant as mentioned by the respondent in the proceeding but the copy of said reply is not filed on record. It is also pertinent to note here that inquiry report does not disclose particulars that how conclusion of monetary loss to the extent of rupees has been recorded by the inquiry officer. It is also clear from the dismissal order that it has been issued by the respondent no.1 who is inquiry officer but he is not appointing authority of the complainant.

23] Considering above facts and circumstances, it is clear that inquiry conducted ex-parte without giving fair opportunity to the complainant. The inquiry officer though not being appointing authority has issued order of dismissal. The reply forwarded to charge by post on behalf of the complainant does not find place on record produced before the Court. There are no particulars on record in the inquiry proceeding to come to just

and proper conclusion of huge loss as alleged. In the said facts and circumstances, it appears that principle of natural justice is not followed by inquiry officer. In view of above irregularities, the enquiry does not appear fair, transparent, impartial, adhering to the principles of natural justice. Therefore, the complainant has satisfactorily proved that the enquiry conducted against him is not fair and proper and the findings drawn by the enquiry officer are also perverse. Hence, issues no. 1 and 2 are given finding in the affirmative. Thus, I proceed to pass the following order.

ORDER

- 1) It is hereby declared that enquiry conducted against the complainant is not fair and proper and in accordance with the principles of natural justice.
- 2) It is hereby declared that the findings of the Enquiry Officer are perverse.

CHANDRAPUR.
Date :- 05.08.2025

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