

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3532 /2017

Sunil Madhavrao Pimpliskar,
Age: 50 years, Occu: Service,
R/o: Ekvira Colony, Varud Road,
Tq.Shindkheda, District Dhule. ...PETITIONER

Versus

The Maharashtra State Road
Transport Corporation, Dhule
Division, Dist.Dhule,
Through the Divisional Controller. ...RESPONDENT

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Mr. Jagdish K. Bansod, Advocate for Petitioner.

Mr. Rakesh N. Jain h/f P.S. Bagul, Advocate for
respondent.

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CORAM : T. V. NALAWADE, J.

DATED : 06TH JULY, 2017.

ORAL ORDER :-

1. The petition is filed to challenge the decision of Complaint (U.L.P.) No.32 / 2013, which was pending in Industrial Court, Dhule and also the order passed by the disciplinary authority against the petitioner in departmental enquiry, by which, his pay scale is brought down up to three stages permanently by way of penalty.

2. Heard both the sides.

3. The petitioner is working as bus driver with respondent Maharashtra State Road Transport Corporation. On 15.10.2008 the bus which was being driven by petitioner met with an accident in the night time. It was noticed that, it was the fault of the petitioner as he was trying to overtake another vehicle when a truck was coming from opposite direction. Charge-sheet was supplied and petitioner replied to charge-sheet. Petitioner contested the departmental enquiry by filing written statement. Petitioner was also examined before the enquiry officer. He was heard on the point of penalty, and after that, the pay was reduced by three stages. The departmental appeal was also dismissed and this decision is confirmed by the Industrial Court.

4. The learned counsel for petitioner submitted that, the appellate authority had imposed the penalty by order dated 17.03.2012, and after that, his appeal came to be decided on 16.01.2013, and so, the penalty order cannot sustain in law. There is no force in this submission as the order of fixing the pay in reduced scale was passed by Divisional

Controller in administrative capacity, only for giving direction on the basis of the final order made in departmental enquiry. After that, the appeal was separately considered and it is decided against the petitioner.

5. The record which was before the enquiry officer shows that, petitioner admitted that he had taken the bus towards right hand side, though he contended that this was done as there were pedestrians, Warkari on the left side of the road. This admission is sufficient to infer that, when the truck was coming from opposite direction, the bus was taken to right hand side, wrong lane and, so, it was the fault of the petitioner. Admittedly, the police case was filed against the petitioner as not only there was the material for inferring that it was rash and negligent driving but had sustained grievous injuries in the accident.

6. The submissions on the record show that, the extent of the damage to the bus was of Rs.1,00,000/-, and extent of the damage to the truck was of Rs.40,000/-. The submissions made show that, this was not the first accident caused by the petitioner. In the past also on two occasions his bus had met with accidents. The persons like petitioners

need to take proper care as passengers are travelling in the bus, and due to such rash and negligent driving, there is a risk to the life of such passengers. Though fortunately nobody died in the accident, the petitioner and some passengers were injured and injuries were grievous in nature. In ordinary course such employee can be removed from service. It can be said that, already a lenient view is taken in favour of petitioner.

7. The learned counsel for the petitioner placed reliance on some observations made by the Apex Court in, **AIR (SCW) 6403** (Brij Bihari Singh Versus Bihar State Financial Corporation and others). In this case the Apex Court has discussed the circumstance showing that, the appellate authority had imposed penalty on the basis of report of enquiry and then the appeal was heard. There was other circumstance showing that, there was no opportunity to the delinquent to cross-examine the witnesses. The facts of the present matter are different. The penalty order was made by Traffic Officer of the Division and appeal was decided by Divisional Controller, the Appellate Authority. Further, there are aforesaid circumstances which lead to inference and they are on the basis of the record. Thus, the observations

made by the Apex Court are not helpful to the petitioner. It is not possible to interfere in the penalty order, and also in the decision given by Industrial Court. In the result, petition stands dismissed.

[T. V. NALAWADE, J.]

vjg/-