



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3105 OF 2018

Maharashtra State Road Transport Corporation
Head Officer at Mumbai Central, Mumbai-8
Through its Divisional Controller,
MSRTC Kolhapur Division,
Kolhapur

.. Petitioner
[Orig. Respondent]

Versus

Bhupal Madhukar Pol
R/o. 2823, 'B' Ward,
Kolhapur

.. Respondent
[Orig. Complainant]

...

Mr. Yashodeep Deshmukh a/w Ms. Vaidehi Pradeep,
Ms. Ameya Tawde, Advocates for the Petitioner.
Mr. Kush Lahankar i/by Mr. S.R. Ganbavale, Advocates for
Respondent No.1.

...

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 12 OCTOBER 2023

PRONOUNCED ON : 18 OCTOBER 2023

JUDGEMENT

1. This writ petition filed by Maharashtra State Road Transport Corporation challenging Judgment and Order dated 13.7.2017 passed by Industrial Court No.1 Kolhapur in complaint (ULP) No.88 of 2016. By that order, the Industrial

Court has partly allowed the complaint filed by Respondent challenging Order dated 12.07.2016 by which penalty of reduction of basic pay by one stage with cumulative effect is imposed on him.

2. Respondent is employed in the services of the Petitioner corporation on the post of Driver. On 12.03.2015, he was deployed on duty to drive bus on Panji-Pune route. A surprise check was conducted by the Excise Department at 1:45 A.M. by intercepting the bus. The raiding team found a box containing 12 bottles of liquor behind the seat of the Driver. Since Respondent was driving the bus, he was taken into custody by Excise Department for interrogation. The concerned Excise Officer prepared a Panchnama in presence of witnesses and seized the box of liquor valued at Rs. 6,400/-. The Excise Department lodged prosecution against Respondent under Section 65(E) of the Bombay Prohibition Act, 1949. In that criminal case, Respondent came to be acquitted on 29.12.2015.

3. In the meantime, Respondent was suspended from service on 13.3.2015. After conducting preliminary enquiry, Memorandum of chargesheet was issued to Respondent on 9th May 2015 alleging the charge of recovery box containing 10 liquor bottles of valued of Rs.6,400/- in the driver cabin

behind his seat. It was alleged that the said conduct resulted in lodging of prosecution in criminal case.

4. Respondent replied the chargesheet on 12.05.2015. His suspension was invoked on 14.05.2015. After conduct of enquiry, report of the Enquiry Officer was submitted holding the charge as proved. Respondent was issued show cause notice on 26.05.2016 proposing to impose penalty of reduction of pay by one stage with cumulative effect. Respondent replied to the show cause notice on 11.07.2016. After considering the reply, Petitioner corporation imposed the penalty of reduction of basic pay by one stage with cumulative effect by order dated 12.07.2016.

5. Respondent filed Complaint (ULP) No.88 of 2016 before Industrial Court at Kolhapur challenging the penalty order. The complaint was resisted by the Petitioner-Corporation by filing written statement. Labour Court delivered order on preliminary issue on 10th January 2017 holding that the conduct of enquiry was perverse and without any legal and cogent evidence. The Petitioner corporation was granted liberty to justify its action by leading fresh evidence. Accordingly, Petitioner corporation led evidence. Industrial Court, after considering the evidence so adduced by the Petitioner-Corporation, delivered Judgment and Order dated

13.07.2017 allowing the complaint partly. It was held that the Petitioner engaged in unfair labour practice under Item 9 of Schedule 4 of MRTU and PULP Act by issuing punishment order dated 12.07.2016. Industrial Court has set aside the punishment order dated 12.07.2016. Aggrieved by the decision of the Industrial Court, Petitioner corporation has filed present petition challenging both the orders dated 10.01.2017 on preliminary issue as well as order dated 13.07.2017.

6. Mr. Deshmukh, the learned counsel appearing for the Petitioner-Corporation would submit that sufficient evidence was produced both in the enquiry as well as before the Industrial Court in support of proof of charge. That the test of proving the charge in departmental inquiry is preponderance of probability. That the concerned Excise Officer, who prepared the panchanama, has been examined before the Industrial Court and the same was duly proved. That the evidence of Excise Officer was sufficient to hold Respondent guilty of the charge levelled against him. In support of his contention, Mr. Deshmukh would rely upon Judgment of the Apex Court in ***Union of India & Ors. Vs. Dalbir Singh***¹. . He would further submit that the penalty imposed on

1 (2021)11 SCC 321

Respondent is not disproportionate and given the fact that the charge is proved by leading evidence of Excise Inspector, the Industrial Court could not have set aside the order of punishment.

7. *Per contra*, Mr. Lahankar the learned counsel appearing for the Respondent-employee would oppose the Petition and support the order passed by the Industrial Court. He would submit that Respondent has been acquitted in respect of the same charge in the criminal case. That the Industrial Court ruled in favour of Respondent in Part-I Award by rejecting the evidence produced during the course of departmental enquiry. That the very Panchnama, on which reliance is placed for punishment, has been disproved in the criminal trial. That therefore such panchnama cannot be read in evidence for the purpose of holding Respondent guilty of the charge. That in absence of any evidence on record, the finding of guilt is perverse and has rightly been set aside by the Industrial Court.

8. Rival contentions of the parties now fall for my consideration.

9. Charge levelled against Respondent in the departmental enquiry was recovery of liquor bottles while being deployed to

drive bus on Panji-Pune route on 12.03.2015. After being served with the chargesheet, Respondent replied the same stating that he was not aware about placing of box containing the liquor bottles in his driver cabin. He was subjected to criminal prosecution by the Excise Department under the provisions of Section 65 (E) of the Bombay Prohibition Act, 1949. However, he came to be acquitted in the criminal case. Mere acquittal in the criminal case on the same charge would not have any bearing on the findings recorded in the domestic enquiry. It is well settled principle that the test of proof of charge in a domestic enquiry is different than the one in a criminal trial. In the domestic enquiry, the charge is to be proved on the touchstone of preponderance of probability. On the other hand in a criminal trial, charge is to be proved beyond doubt. The purpose of conducting two proceedings are also entirely different. While criminal prosecution is conducted to punish an accused for commission of offence, domestic enquiry is held to ensure maintenance of discipline in service.

10. In ***Dalbir Singh*** (supra), the Apex Court has summarized the principles of proving charge in a domestic

enquiry. The Apex Court has held in Para 24, 25, and 28 as under:

24. This Court *in Ajit Kumar Nag v. Indian Oil Corpn. Ltd.*² held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. It was held as under: (SCC p.776, para 11)

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of

2 (2005) 7 SCC 764 : 2005 SCC (L&S) 1020

“preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside .” (emphasis supplied)

25. This Court in **NOIDA Entrepreneurs Association v. NOIDA & Ors.**³ held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under: (SCC p.392, para 11)

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. **[See Tata Cellular V. Union of India and Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)**⁴ .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to **Kendriya Vidyalaya Sangathan v. T. Srinivas, Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry**⁵ and **Uttaranchal RTC v. Mansaram Nainwal**.⁶ [

“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public

3 (2007) 10 SCC 385 : (2008) 1 SCC (Cri) 792 : (2008) 1 SCC (L&S) 672

4 (2004) 2 SCC 130

5 (2005) 10 SCC 471 : 2005 SCC (Cri) 1605]

6 (2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

28. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle

(S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.

11. Considering these broad principles of distinction between criminal trial and domestic enquiry, in my view, finding recorded in the criminal trial would be wholly irrelevant for the purpose of examining whether the charge levelled against Respondent was proved in the domestic enquiry.

12. As observed above, Petitioners have also challenged Part-I Award dated 10.01.2017. I do not propose to delve deeper in area of correctness of the Part-I Award dated 10.01.2017 in view of opportunity of leading evidence being availed by Petitioner-Corporation. Suffice it to observe that the Industrial Court has committed an error in holding that the Enquiry Officer ought to have considered the acquittal of Respondent in the criminal case in Para 14 and 15 of its Part-I Award. The Industrial Court has recorded following findings:

14. *The fact of acquittal of the Complainant in the criminal case was before the enquiry officer at the time of giving his findings but the same has not been considered by the enquiry officer at all. The enquiry officer is also giving his findings on the same charges as were in the criminal case. The incidence and documents are the same in both the criminal case as well as the departmental enquiry. The officer deciding the criminal case is a judicial officer and the enquiry officer is a quasi-judicial authority. Therefore, findings and conclusions by a judicial officer will always have bearing on the findings of a quasi-judicial officer will always have bearing on the findings of a quasi-judicial authority, which the enquiry officer has failed to consider.*

15. *Considering the above facts and circumstances and my discussion on this issue, I hold that the enquiry conducted in this matter is perverse, without any legal and cogent evidence, probable to establish the charges against the Complainant. Hence, I hold the issue in the affirmative.*

13. The above findings recorded by the Industrial Court are unsustainable as a finding recorded in a criminal trial cannot have any bearing the proof of charge in domestic enquiry. Be that as it may, since Petitioner-Corporation has adduced evidence before the Industrial Court in pursuance of Part-I Award, it is not necessary to delve deeper into the correctness of the findings recorded by the Industrial Court in Part-I Award.

14. After delivery of Part-I Award dated 10.01.2017, Petitioner-Corporation examined Shri. Prakash Eshwara Patil, Sub Inspector of Excise Department. In his examination in chief, he gave following evidence:

It was also previously serving under same post of Sub-Inspector. At the relevant time I was entrusted with work of Inspection in Excise Department.

In the year 2015 I was doing field work of Inspection in Excise Department. On 12-03-2015 our Department got information in respect of illegal trafficking of liquor at Gangan Bavada Kolhapur route. So I along with my team at the place Balinga Taluka Karveer were waiting to spot the said trafficking. We stopped the Bus No. M.H. 07, C-9604. On entering the Bus it was found that there was a box containing liquor below the seat of driver. The driver at the relevant time was Shri. Bhopal Pol. We took Shri. Pol into custody and allowed the Bus to go till the Depot. In respect of this incidence I have carried Panchanama. Now I am shown the Panchanama which filed on record at Ex. C-12/1. The said Panchanama bears my signature. Thereafter, we informed the said incidence to traffic controller Shri Kundan Bhise. The seized material is at present not available since it is destroyed, after the criminal. The documents in this respect are filed today along with list Ex.C-10 at serial no. 2,3,4 and 5. The document at Serial no. 2 is signed by Inspector Mr. S.R. Jadhav whose signature I identify. The document at Serial no.3 is signed by Inspector Shri Sanjay Patil on 27-02-2017. I identify signature of Shri. Sanjay Patil. The said documents at serial no.3 is an order to destroy the seized articles(मुद्देमाल). The details in respect of a seized articles is filed and the same is in the chart which is filed at Serial No.5 with list at Ex.C-10.

15. Thus, Shri. Prakash Eshwara Patil adduced evidence before the Industrial Court that he had intercepted the bus driven by Respondent alongwith his team. That the box containing liquor bottles was found below the seat of the driver. He identified his Panchnama drawn by him. Thus in addition to specific evidence of the Sub Inspector of Excise Department, the panchnama of seizure was also proved in the enquiry.

16. The Industrial Court has proceeded to discard the panchnama by recording following findings:-

11.To justify the action of the Respondent, impugned in this Complaint and to prove the charges against the Complainant as alleged in the charge-sheet, the Respondent Corporation has examined the Sub-Inspector of the Excise Department who checked the bus on the relevant date and found box containing liquor below the seat of the Complainant. The said witness in his chief examination has stated that he has carried Panchbnama, which bears h is signature. He has filed documents to show seizure of the box containing liquor bottles and destruction of the same after completion of criminal case. In his cross-examination he has stated that on the basis of his Panchnama, criminal case was initiated against the Complainant and the same was numbered as summary criminal case S.C.C. No. 3440/2015. He has admitted that, on 29/12/2015 the said criminal case is finally decided and the Complainant was acquitted as the charges were not proved against him. He has also categorically admitted that, in the said criminal case said Panchnama in question was not proved and establihsed. No appeal is preferred against the said order by the department.

On the basis of this admission by the said witness, it is clear that, the Panchnama in question is not proved and establihsed. From the cross-examination of the Complainant who examined himself in rebuttal, nothing has been extracted to establish the charges against him. It is clear from the record that the charge-sheet issued upon the Complainant dated 09/05/2015 based all the incidence and allegations against the Complainant on the Panchnama and criminal case filed against the Complainant. The charge-sheet make charges upon the Complainant by holding him responsible for the said incidence but also the charge-sheet does not mention that the Complainant had purchased the bottles or the same was found from his custody. Therefore there is no evidene to show that the Complainant was responsible for the alleged misconduct. There is no other evidence on behalf of the Respondent Corporation to hold the Complainant responsible for the alleged incidence in the charge-sheet. The Panchanama and the criminal case based on which the Complainant is charge-sheeted is not establihsed and proved and further the Complainant is acquitted from the criminal case.

17. Above findings recorded by the Industrial Court are perverse in that failure to prove panchnama before Criminal Court is totally irrelevant factor as the panchamana has been proved before the Industrial Court by examining the Sub-Inspector of Excise Department. The Industrial Court discarded the panchnama which was proved before it by relying upon findings recorded by Criminal Court. This is impermissible in law. On the basis of proof of panchnama as well as evidence adduced by the witness of the Excise Department, recovery of bottles from the cabin of driver of the bus driven by respondent is proved.

18. The Industrial Court has recorded a finding that no charge is levelled against Respondent that he purchased the bottles or that the same were found in custody. In my view this findings are also totally unwarranted. Once the recovery is made from Driver's Cabin behind his seat, the burden of proving that the same was not in Respondent's custody shifted on the Respondent, who has not led any evidence to prove that the bottles belonged to some other person. Otherwise, the factum of recovery of liquor bottles from cabin of the bus which was being driven by respondent is sufficient to raise a probability that the bottles belong to Respondent. It is

required to be borne in mind that a harsh penalty of removal or dismissal or compulsory retirement is not imposed on Respondent. For the charge of keeping liquor bottles in the cabin of the bus driven by him, an insignificant penalty of reduction basic pay by one stage with cumulative effect is imposed on him. In my view, the charge levelled against the Respondent is proved on the touchstone of preponderance of probability. In a domestic inquiry, even if there is some evidence, the same is sufficient for proof of the charge. It would be apposite to refer to the following observations made by the Apex Court in its judgment in **Kuldeep Singh v.**

Commr. of Police, (1999) 2 SCC 10:

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. **But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.**

(emphasis supplied)

19. The Industrial court has erred in setting aside the penalty order. Respondent was driving a bus of the Maharashtra State Road Transport Corporation. It was not necessary for Petitioner-Corporation to prove that the Respondent purchased the liquor bottles. His defence that

someone else kept the bottles his cabin cannot be accepted as he cannot let his driver cabin to be used for illicit smuggling of liquor bottles. It must be borne in mind that such illicit smuggling of liquor is an offence under the provisions of the Bombay Prohibition Act 1949. Respondent ought to have been careful in ensuring that the cabin of bus driven by him is not used for such illegal activity. Therefore, even if his defence that someone else placed liquor bottles in his cabin, was to be believed, he could not be absolved of the charge level against him. On the contrary if the charge of purchase and smuggling of liquor was to be proved, that charge would entail harsher penalty.

20. I therefore find the order passed by the Industrial Court to be indefeasible. The petition therefore succeeds. Judgment an order dated 13.7.2017 passed by the Industrial Court is set aside. Rule is made absolute in above terms. There shall be no order as to costs.

SANDEEP V. MARNE, J