



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

CIVIL WRIT PETITION NO. 4129 OF 2016

Narayan S/o Namdeorao Salve,
Age: 52 yrs, Occu: Nil,
R/o – C/o Shri Tipale R.G,
House No. 843, Mhada Colony,
Murtijapur, Aurangabad,
Dist. Aurangabad

...Petitioner

Versus

1. The Managing Director,
Maharashtra State Road Transport
Corporation, Mumbai Central,
Mumbai
 2. The General Manager (M.E.),
Maharashtra State Road Transport
Corporation, Mumbai Central,
Mumbai
 3. The Special Appellate Tribunal/Committee,
M.S.R.T.C. through It's President,
Mumbai Central, Mumbai
 4. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon
- ...Respondents**

- Mr. M. G. Patil h/f Mr. A. S. Mali, Advocate for the
Applicant/Petitioner
- Mr. A. B. Dhongade, Advocate for the Respondents

**CORAM : R. M. JOSHI, J
RESERVED ON : AUGUST 12, 2025
PRONOUNCED ON : AUGUST 19, 2025**

JUDGMENT :

1. This Petition takes exception to the impugned

order passed by the Appellate Authority dated 13.01.2016 dismissing the Appeal wherein challenge was raised to the order of dismissal of the Petitioner dated 21.11.2014.

2. Petitioner was appointed as Assistant Workshop Superintendent in the year 1987. He came to be promoted as Deputy Mechanical Engineer and had worked for 27 years and till the date of issuance of charge-sheet to him, he had unblemished service.

3. on 22.01.2014, Petitioner along with other Officers were appointed by Maharashtra State Road Transport Corporation (for short '**Corporation**') as members of Scrap Delivery Committee in Jalgaon Divisional Workshop. There was a contract given for lifting this scrap material for a period of a year. As it was found that the weight and measurement machine was not proper, Petitioner lodged complaint in this regard. He claims that on assumptions charge-sheet came to be issued against him. According to him, with ulterior motive of his dismissal from service, hurriedly inquiry was conducted against him. He was issued with final show cause notice dated 19.07.2014.

He responded to the said notice and claim innocence. On 21.11.2014 he came to be dismissed from service. Being aggrieved by the said order of dismissal, he preferred Appeal as provided by rules. He challenged the said dismissal on the ground of misconducts being not proved against him, so also the punishment is shockingly disproportionate considering the nature and gravity of charges. It is also claimed that no loss has been caused to the Corporation. As appeal was dismissed, this Petition is filed.

4. Learned Counsel for the Petitioner submits that the Petitioner has performed long and meritorious service with Corporation and on false pretext, charge-sheet came to be issued against him. It is his submission that even in the said charge-sheet, there is no allegation that by act of the Petitioner any loss has been caused to the Corporation. It is his submission that during the course of enquiry it has come on record that difference in the weight of vehicle loaded with scrap is possible for various reasons not attributed to any individual. It is his submission that there is absolutely no evidence in order to show that

any misconduct has been committed by him or even there is admitted misappropriation. It is argued that the order of dismissal has been passed without taking into consideration the gravity of the charges and also mitigating circumstances. According to him, these aspects are ignored by the Appellate Authority and the Appeal is dismissed essentially on the ground that there is a criminal offence registered against the Petitioner. In this regard, it is his further submission that the Petitioner has been acquitted from the criminal charges in RCC No. 487/2014. According to him, charges in the criminal proceedings and domestic enquiry were same and since identical witnesses were examined in both proceedings, in view of the judgment of Hon'ble Supreme Court in case of Maharana Pratap Singh vs. State of Bihar and Others, 2025 SCC OnLine SC 890, action of dismissal of Petitioner is not sustainable. He, therefore, seeks reinstatement of the Petitioner in service with full back wages and continuity of service.

5. Learned Counsel for the Respondents /Corporation opposed the Petition by contending that in

the criminal trial same witnesses were not examined as they were examined in the departmental enquiry. It is his submission that the nature of proof required in the departmental enquiry is not as strict as the criminal proceedings and hence, the acquittal of the Petitioner in the criminal trial has no consequence about the maintainability of the order of dismissal based on the departmental enquiry. He placed reliance on the following judgments in order to argue that both these proceedings are independent to each other and the result of one is inconsequential on the outcome of another proceedings: *Airports Authority of India vs. Pradip Kumar Banerjee, Criminal Appeal No(s). 8414/2017 & Lalit Popli vs. Canara bank and Others, AIR 2003 SC 1796.*

6. On merit, it is argued that actual misappropriation is not required and considering post held by the Petitioner, there is sufficient evidence on record to indicate that he has involved himself in the misconduct. It is further argued that having regard to the discretion of the Employer/Corporation to take action and limitation of this Court to cause

interference in the findings recorded by the Enquiry officer in an departmental enquiry, this is not a fit case for setting aside order of dismissal.

7. There is no dispute about the fact that before issuance of charge-sheet, Petitioner has rendered 27 years of long service. His past record is clean. He was issued with charge-sheet on 11.03.2014 and prior thereto, he came to be suspended on 23.01.2014. This not the case wherein the Petitioner was not heard in the departmental enquiry or was not given sufficient opportunity in his defence. He has participated in the departmental enquiry. The record of the enquiry indicates that the statements of witnesses were recorded in presence of the Petitioner and that appropriate opportunity was granted for cross-examination of those witnesses. He defended his own case before Enquiry Committee. Admittedly, report of the enquiry was provided to the Petitioner before action of dismissal is taken. Order of dismissal was preceded by show cause notice giving him opportunity to respond to the proposed action of dismissal of his service.

8. The law on the point of re-appreciation of evidence led in the departmental enquiry is settled to say that in exercise of writ jurisdiction, it is not open for this Court to reconsider the said evidence as an Appellate Authority and to record independent different findings. Perusal of the record indicates that to support the charges of misconduct, witnesses were examined. From cross-examination of those witnesses, Corporation was able to prove the misconducts against the Petitioner on preponderance of probabilities.

9. At this stage, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in case of Maharana Pratap Singh (supra). It is held therein that where there is acquittal in a criminal proceedings on similar or identical charges, evidence, witnesses and circumstances, the action under the departmental proceedings cannot sustain. Here in this case, perusal of the record indicates that the witnesses examined by the prosecution in the criminal proceedings were not identical to the witnesses examined in the domestic enquiry. There are more than

three witnesses, which were examined in addition to the witnesses examined in the criminal proceedings. Apart from this, even if it is accepted that the Petitioner was not found involved in the actual misappropriation, there is evidence to hold that employment misconduct has been committed by him. Thus, this cannot be said to be a case wherein the Petitioner could be held innocent for all the charges leveled against him.

10. Even if it is accepted that the charges are proved against the Petitioner, for the purpose of inflicting any punishment, it is mandatory for the Employer to take into consideration the nature and gravity of the charges and the mitigating circumstances, if any. Here in this case, admittedly, no loss has been caused to the Corporation. Moreover, it cannot be said with certainty that the Petitioner has done any conscious act in order to make undeserving gain. Similarly, undeniably Petitioner has rendered unblemished services of 27 years before the action in question. A due weightage, therefore, is required to be given to the said fact, while determining the punishment.

11. Not only Employer but also Appellate Authority was required to take into consideration case specifically sought to be made out before it by Petitioner regarding proportionality of punishment. The Appellate Authority has not taken into account the past service record of the Petitioner and the order of dismissal was confirmed essentially on the ground that the image of the Corporation is damaged by the acts in question. Since, Employer as well as Appellate Authority have failed to taken into consideration nature of gravity of misconduct, the past service record and other mitigating circumstances, the order of dismissal cannot sustain.

12. Petitioner is out of employment for substantial period after his dismissal. Considering the fact that this Petition is of year 2016 and that action of dismissal is of year 2014, this Court finds no propriety in relegating back matter to the employer for imposing fresh punishment instead in the facts of the case, denial of back wages would be sufficient punishment for the Petitioner. In any case, he has not made statement before the Appellate Authority of not

gainfully employed. Thus, even otherwise there would be justification for denial of back wages.

13. In view of above discussion, Petition stands allowed in following terms:

ORDER

- A) Impugned orders of dismissal of Petitioner dated 21.11.2014 and confirmed by the Appellate Authority by order dated 13.01.2016, are set aside.
- B) Petitioner is held to be entitled for reinstatement in the service with continuity of service and other consequential benefits but without back wages.
- C) Rule is made absolute in above terms.

(R. M. JOSHI, J.)