

IN THE LABOUR COURT-1 AT AURANGABAD.
(Presiding Officer D. S. Khedekar)

Com ULP No. 53 of 2015
CNR No. MHLC20000486-2015

Bapu S/o Ashok Gavali,
Age : 37 years, Occ. Conductor,
Badge No. 7273, M. S. R. T. C.
Depot No. 1 Aurangabad,
Tq. Dist. Aurangabad

...Complainant

And

- 1. The M. S. R. T. Corporation,**
Through its Divisional Controller,
M. S. R. T. C. Aurangabad,
Tq. Dist. Aurangabad.
- 2. Divisional Traffic Superintendent,**
(Default) M. S. R. T. C. Aurangabad,
Dist. Aurangabad.

...Respondents

Advocates : Shri. A. N. Surwase, Advocate for Complainant

Smt. S. P. Malode, Advocate for Respondents

ORDER ON PRELIMINARY ISSUES EXH. O-1

(Dtd. 20/08/2025)

1. This is a complaint of unfair labour practice filed under Section 28 Item 1 (a), (b), (d), (f) and (g) of Schedule-IV of MRTU & PULP Act, 1971.

2. In short the case of the complainant is that he was appointed as a Conductor on 08/08/2004. On 01/03/2007 he was transferred to Aurangabad Division and posted to Depot No. 1 at Aurangabad and since then till today he is serving in Depot No. 1 as Conductor. The respondent has issued charge-sheet dtd. 23/05/2013 alleging misconduct under clauses 7(a), 7(s), 10, 11 & 12(b) of Schedule A of the D & A Procedure. The applicant replied the said charge-sheet on 10/06/2013 and denied all the charges leveled against him. Thereafter the respondents have conducted enquiry against the complainant on 24/08/2013. On 19/10/2015 the respondents have issued show-cause notice of dismissal along with perverse findings of the respondent No. 2. The case of the complainant that the enquiry conducted against him is in violation of principles of natural justice and the findings of the enquiry officer are illegal; hence the respondents have engaged in unfair labour practice by issuing second show-cause notice dtd. 19/10/2015. Therefore, it is prayed that the enquiry conducted by the enquiry officer is illegal, improper and unfair and findings of the enquiry officer are perverse.

3. The respondent filed written statement at **Exh. C-4**. The contention of the respondent that the complainant is the revenue collector of the respondent and the complainant has committed serious misconduct while performing his duty as a Conductor. On 06/05/2013 when his bus was checked at Deulgaon Raja, it is found that there was 62 passengers with tickets and 5 passengers without tickets. Out of total 67 passengers, the complainant has issued handwriting one ticket to a group of 5 passengers by taking fare of Rs. 1325/- from the said passengers for traveling from Akola to CIDCO Aurangabad. As the

misconduct of the complainant is grave hence the enquiry was conducted against the complainant. The enquiry conducted against the complainant was according to the principles of natural justice. Each and every opportunity was given to the complainant. The charges leveled against the complainant are proved before the enquiry officer. Hence, the respondent has issued second show-cause notice of dismissal. The respondent has not committed any unfair labour practice. Therefore, it is prayed that the enquiry conducted against the complainant is fair, legal and proper and findings of the enquiry officer are not perverse.

4. On the basis of contentions of both the parties preliminary issues are framed at Exh. O-1, which are referred herein under and I have recorded my findings thereon with reasons as follows :

Sr. No.	PRELIMINARY ISSUES	FINDINGS
01	Whether complainant proves that the enquiry conducted against him is illegal ?	Affirmative
02	Whether complainant proves that the findings of enquiry officer are perverse?	Affirmative
03	What order ?	As per final order

REASONS

5. I have heard learned Advocate for complainant and respondent. The complainant has relied upon decision in case of **Krishankumar Nagar V/s Management M/s Delhi Transport**

Corporation, [2012 (132) FLR 140]. In the case of **Shanmukhayya V/s Divn. Controller, Karnataka State Road Transport Corporation, Koppal Division, Koppal District, 2000 III CLR 985** and copy of Discipline and Appeal Rules At Exh. U-37.

6. The respondent has relied upon decision in the case of **Sarjerao Baburao Pawar V/s Divisional Traffic Superintendent (Aparadh) MSRTC**, reported in Writ Petition No. 960/2022 decided on 15/07/2024, in the case of **The Divisional Controller, MSRTC V/s Babusha Mehboobsha**, in Writ Petition No. 2693/1994 decided on 28/07/2006, in case of **Namdeo Tukaram Mokashe V/s MSRTC**, in Writ Petition No. 11502 of 2022, in the case of **Karnataka State Road Transport Corporation V/s A. Ramanna, LAWS(KAR)-2001-3-4**, in the case **Gajendra Ghodkar V/s MSRTC** in Writ Petition No. 85/2020 decided on 20/01/2020, in the case of **Uttar Pradesh State Road Transport Corproation V/s Vinod Kumar, LAWS(SC)-2007-12-17**, in the case of **Mohd. Mukhatar Mohd. Wakaroddin V/s State of Maharashtra and Anr., 2017(6) Mh. L. J. 511** and in the case of **Ashok Rambhaji Tupe V/s MSRTC & Anr. Writ Petition No. 4086/2016**.

7. The complainant has filed documents of enquiry at **Exh. U-4**. Whereas the respondent has filed documents of enquiry at **Exh. C-5**. The respondent has filed the copy of enquiry proceeding of complainant at page Nos. 1 to 6 vide **Exh. C-14**.

8. I have gone through the averments of the complaint, statement of respondent and the enquiry papers filed on record in the light of case laws relied upon by both the parties. On the basis of

statement advanced by learned Advocate for both the parties, I had scrutinised the enquiry papers and the decisions relied upon by both the parties. It is admitted fact in the complaint that complainant was appointed as a Conductor on 08/08/2004 and he was transferred on 01/03/2007 to Aurangabad Division and serving in depot No. 1 as Conductor. It is admitted fact on record that the complainant was performing duty as a Conductor on 06/05/2013 on the scheduled duty from Amravati to Aurangabad and the bus was checked by the Assistant Traffic Inspector at Deulgaon Raja. At the time of inspection it is alleged by the respondent that the complainant had received amount of Rs. 1,325/- towards payment of ticket paid by 5 passengers and the complainant did not issue tickets to the said passengers and they were found without ticket. It is alleged that the complainant had stated that ETI machine is not working properly and therefore, on blank paper in writing No. 004373 from Akola to CIDCO rate of Rs. 1,325/- for 5 passengers were received and tickets were at the end of 114 to 100 and tickets were cancelled and ticket No. 004409 for Rs. 795/- of 3 passengers and 004410 for Rs. 530/- of 2 passengers was issued and same were collected for official purpose which is alleged while taking amount of Rs. 8/- was found less with the complainant and statement of complainant as well as some passengers were recorded.

9. Admittedly, charge-sheet dtd. 10/06/2013 was issued and complainant had replied thereupon and denied the allegations. The complainant stated that at the time of checking there was crowd of passengers and there were 67 passengers travelling in the bus and he was asking passengers to take tickets and he had properly issued tickets and thereafter the machine was blocked. The complainant has denied

that he had collected amount of Rs. 1,325/- and then the amount ought to have been excess. However, there was shortage of amount of Rs. 8/- and reporter suppressed this fact and levelled charges of misappropriation on the basis of false report. The complainant has challenged the procedure of enquiry and report of reporter and claimed that the enquiry conducted by the respondent is illegal and during the enquiry though he was suspended on 22/05/2013 his suspension was revoked on 24/08/2013. The complainant has claimed that he has not committed any misconduct still the enquiry officer under presumption alleged misconduct and recorded perverse findings.

10. The respondent has claimed that the complainant has committed misconduct and therefore, he was awarded punishment for several times. The complainant had issued tickets to the passenger in his own hand writing by receiving amount and 5 passengers were found without ticket out of total 67 passengers and had checked. The misconduct of complainant was found by the inspector and accordingly he had filed report no. 355 on dtd. 08/05/2013 and accordingly charge-sheet was issued. The charges were levelled against the complainant and the enquiry was conducted against the complainant and sufficient opportunity was granted to the complainant and as per report of reporter, it is found that the complainant has given ticket No. 4373 to the passenger who was travelling from Akola to Undri and same was given to one another group of passengers by writing in hand writing for travelling Akola to CIDCO, Aurangabad by recovering fare of Rs. 1325/-. The ticket bearing No. 4373 was issued who were already completed the travelling to Undri and bus was inspected at Deulgaon Raja. The ETI machine was checked and the passengers were not

issued tickets who were travelling from Akola to Deulgaon Raja and despite receiving of amount of Rs. 1325/- the complainant had issued written handwriting ticket bearing No. 4373 and amount of Rs. 1325/- was taken and thereby committed misconduct by issuing ticket in hand writing by recovering amount.

11. From the enquiry papers filed at Exh. C-5 by the respondent it appears that the report was produced and on the basis of report charge-sheet was issued to the complainant on 23/05/2013 and enquiry was proposed to be held. The complainant had replied on 10/06/2013. From the statement of complainant through enquiry report dtd. 23/08/2013 it appears that some questions were asked to the complainant as regards receipt of charge-sheet and charges leveled against the complainant. The complainant declined the charges and thereupon the statement of reporter was recorded who had filed report and by one statement he has stated that the report be taken into consideration as his statement.

12. The allegations were that the complainant had received Rs. 1,325/- from 5 passengers while travelling in bus from Akola to CIDCO, Aurangabad and on the ground of machine is stopped. Ticket No. 4373 was issued by writing in handwriting and refused to make statement and cooperate in the investigation. The statement of reporter is recorded however he has neither specifically stated the contents of report before the enquiry officer nor he has stated the incidents contained in the report whether it is true or correct. The statement in the form of report is considered without stating the contents and

without proving the contents of the report through evidences recorded before enquiry officer.

13. It appears that the enquiry officer has put certain questions to the reporter and the question Nos. 1 to 8 are put to the reporter in the form of questions suggested answer and it would amount to putting leading questions to the witness which is not fair in the process of inquiry of allegations. Instead of making the statement by the reporter the enquiry officer has claimed whether he has filed report and whether it was in his handwriting and whether it is signed by him. The procedure of putting question with suggesting answer to the witness is appears to be contrary to the process of inquiry of allegations and it shows that the inquiry officer is conducting inquiry as if performing roll of prosecution in conducting enquiry which is not fair and contrary the principles of natural justice followed for finding truth.

14. The reporter was asked by referring contents of report and questions itself suggesting the answer to the reporter and such kind of test applied by the enquiry officer seems to be contrary to the principles of natural justice. The reporter was asked that the Conductor was found responsible on the spot and spot statement bears signature of the reporter. It means the answer was suggested to the reporter with fixing responsibility of the Conductor and therefore, the statement of the present form sought from the witness is completely contrary to the fairness of enquiry and the investigation and the allegations.

15. The questions put by the enquiry officer in the present form does not disclose the fair statement of the reporter before the enquiry

officer as regards the investigation of incident by the report of reporter who has inspected the bus. The statement of reporter in the present form can not be fair statement and can not be termed as statement by his own accord for understanding the real incident of inspection as well as the statement of reporter and the passengers for finding guilt of the complainant. Thereafter, the statement of complainant was recorded on 24/08/2013 and thereafter the investigation was not worked out through enquiry officer till 15/04/2015, however no plausible explanation is assigned for such delay. Later on on 15/04/2015 again the statement of complainant was recorded. There is gap of more than 1 year from recording statement of complainant in the year 2013 and again the enquiry officer has recorded statement on 15/04/201, which is contrary to the procedure of appeal and discipline provided.

16. Admittedly, at the time of inspection the cash was checked and amount of Rs. 8/- was found less than the actual cash and there was no excess cash of Rs. 1,325/- alleged to be received by the complainant from the passengers. If there would have been receipt of said amount without fair ticket, then there would have been excess cash in the collection of the conductor, however, there was no recovery of excess amount of Rs. 1,325/- , however, there is less amount of Rs. 8/-. There is final conclusion of receiving amount of Rs. 1,325/- in absence of statement of passengers who had paid the said amount which can not be completed. The nexus to payment and receipt of amount by the complainant is completely missing. Therefore, the examination of passenger who had alleged the payment of Rs. 1,325/- and receipt of amount of Rs. 1,325/- by the complainant would have been bring on record.

17. The reporter has stated the entire report as his statement before enquiry officer and did not make specific statement against the complainant before the enquiry officer and mere questions put by the enquiry officer to the reporter in the form suggesting answer form can not be taken as fair statement of the reporter against the complainant to establish charges levelled against the complainant. The learned Advocate for respondent placed reliance on the decision on the aspect of holding enquiry in absence of evidence of passenger and claimed that examination of passenger is not necessary. The reporter has stated as report being part of evidence and fail to make out statement in specific form to prove the charges against the complainant and therefore in that circumstances the statement of passengers who had paid amount for ticket and still found without fair ticket would have been material evidence to establish nexus of charges and in absence of evidence of passengers the statement of reporter is only the evidence of reporter who had carried out inspection and issued charge-sheet of the misconduct.

18. The passengers who had made statement about payment of Rs. 1,325/- and still it was not found excess with the complainant and there was less amount of Rs. 8/- and therefore, on that basis of statement of reporter the inference of collection of amount of Rs. 1,325/- can not be drawn. Though it is not practicable in every case to examine passenger as witness, however when the statement of reporter is as if of investigation officer, in such situation it is necessary to bring cogent evidence before the inquiry officer. As per the statement of reporter 5 passengers were found without ticket and on their statement

it is claimed that they had paid amount of Rs. 1,325/- to the complainant.

19. The statement of said passengers is part of report and recorded before reporter. However, the aspect of payment of amount and receipt of amount by the complainant is not performed before the reporter and though it is stated by them before the enquiry officer can not establish direct nexus of complainant. Under such circumstances, on the basis of statement of reporter the conclusion of payment by the passenger to the complainant for issuing tickets and in absence of their evidence contrary inference can not be drawn. In other word, at the most on the basis of statement of reporter, it can be stated that he has recorded statement of passengers. However, the material aspect of payment of Rs. 1,325/- to the complainant can not be said to be established when there was no excess amount found with the complainant.

20. The learned Advocate for respondent relied upon the decisions and claimed that the examination of the passenger is not material. In the case of Karnataka State Road Transport v/s B.S. Hullikatti reported in AIR 2001 SC 930 it was found that a domestic inquiry was held in which it was alleged that he had collected at a particular trip of the bus Rs. 2.25 from each of the 35 passengers but had issued tickets of the denomination of Rs. 1.75 only. The inquiry officer came to the conclusion that the allegation that the Conductor had issued tickets of Rs. 1.75 instead of Rs. 2.25 was proved but it had not been proved that he had collected the amount of Rs. 2.25 from the passengers. In that context it was held that the non examination of passenger in the inquiry does not in any way vitiate the inquiry. In the present case by virtue of statement of reporter on the questions put by

the enquiry officer which suggesting answer in that case the examination of passengers to find out the payment of Rs. 1,325/- and they were allowed to proceed without ticket was required to be established. The question put by the enquiry officer in the form and the conclusion drawn thereon by enquiry officer as if the statement of passenger is proved and therefore, under the presumption the conclusion drawn by applying such procedure can not be said to be fair.

21. The statement of reporter is as per the report and the statement is without making statement of fact, perceived or heard by reporter can not be treated as evidence before the enquiry officer to establish the nexus of complainant to prove alleged charge of misappropriation. The another aspect needs to be considered and by perusal of statement of reporter before the enquiry officer it shows that the reporter has claimed that the report is to be taken as his statement in the enquiry and the report particularly having reference that “सदर बस तपासणी झाली नसती तर वाहकाने रु. 1,325/- चा अपहार केला असता. आपल्या माहिती व पुढील कार्यवाही करिता अहवाल सादर.” In view of aforesaid statement of the reporter it shows that the reporter has claimed if there would have been no inspection then the conductor could have misappropriated the amount.

22. In other words it means actually there was no misappropriation of the amount and therefore, the cash was not found exceeding the actual amount with the conductor and less amount of Rs. 8/- was found with the conductor at the time of inspection. Therefore, in view of such circumstances examination of the particular witness / passenger was necessitated to find out whether the said passengers had

make payment of their tickets and the tickets found with them whether issued by the complainant or not. In absence of statement of passenger and proving the nexus of recovery or receipt of amount by the complainant final conclusion of misappropriation of amount alleged to be received from the passenger can not be drawn.

23. Merely because the misappropriation could have been committed by the complainant if there would have been no inspection of the bus at the relevant time can not be a ground to conclude that the misappropriation is committed by the complainant. The reporter has presumed the fact of misappropriation which could have been committed by the complainant if there was no inspection of the bus and therefore, on the basis of reporter's statement it can not be said that the amount was received by the complainant from the passengers and the tickets were not issued or not received properly as alleged by the passengers.

24. The another aspect is in respect of issuing tickets to the passengers by writing tickets and the allegations of issuance of ticket in the hand writing of complainant is concerned. The actual statement of passengers who had found or seen the complainant in writing the tickets who had the actual witnessed the incident was material and in such circumstances the statement of reporter can not be presumed to be direct evidence and in other word, it is hearsay evidence in the eyes of law. The learned Advocate for respondent placed reliance upon the decision referred herein above and claimed that the examination of passenger was not necessitated. However, considering the statement of reporter and the not finding of excess cash with the complainant at the

time of inspection when misappropriation of amount of Rs. 1,325/- was claimed, in the context the statement of passenger was material to bring home the nexus of payment for the ticket and issuance of hand written ticket to the said passenger was necessary.

25. The enquiry officer or the respondent did not examine the passenger who had made allegations of misappropriation of amount of ticket and hence, the statement of reporter is nothing but the hearsay evidence in respect of misappropriation of amount of Rs. 1,325/-. If there would have been excess amount found with the complainant at the time of inspection then the presumption of taking amount from the passengers and allow to continue their journey without issuing tickets or issuing fabricated tickets would have been found correct, however, no such case is levelled against the complainant. Therefore, the conclusion drawn by the enquiry officer on the statement of reporter is perverse.

26. The another aspect needs to be considered is that the entire process of holding enquiry does not reflect that the procedure of holding enquiry was explained to the complainant before conducting enquiry or before explaining charge or after explaining the charge to the complainant shows breach of principles of natural justice. The next vital issue as regards not concluding enquiry within the statutory prescribed period and despite having right to conclude enquiry within statutory period of six month as per rule 18 (Sankirna) of the discipline and appeal rules filed on record at Exh. U 37. The postponement of enquiry for long period has caused prejudice to the right of complainant and delay in inquiry has caused loss of faithful and

correct incident by the complainant. It is but natural that by span of time and long period for concluding inquiry the complainant could not make defence and delay of enquiry has caused prejudice to the right of complainant and it is against the principles of natural justice.

27. On the basis of inquiry report and considering the conduct of inquiry through the inquiry officer and evidence recorded before the inquiry officer and for the aforesaid reasons, I am of the considered view that the procedure followed by the enquiry officer is improper, illegal and unfair and contrary to the rule of discipline and appeal particularly provided for concluding of enquiry. The findings recorded by the enquiry officer on the statement of reporter under the presumption of misappropriation would amounts to findings without evidence and therefore, the findings of the enquiry officer become perverse. On the basis of aforesaid reasons I answer issue No. 1 and 2 affirmatively and proceed to pass following order;

ORDER

1. The enquiry conducted against complainant is illegal.
2. The findings of the enquiry officer are perverse.
3. Parties shall take note thereof.

(Typed and declared in open court)

Place: Aurangabad
Date: 20/08/2025

(D. S. Khedekar)
Presiding Officer,
Labour Court-1, Aurangabad