

BEFORE THE JUDGE, LABOUR COURT
CHANDRAPUR.

Exh.O-2

Complaint (ULP) No.04/2023
(CNR NO.MHLC340000772023)

Shital Prashant Ballaar ,

Aged about 43 years, Occu : Service,

R/o C/o,Dhale, Siddhi Plaza,

Arvindnagar, Mul Road, Chandrapur.

.... **Complainant.**

-:- VERSUS -:-

1. Maharashtra State Road

Transport Corporation.

Through its Divisional Traffic

Superintendent,

MSRTC, Chandrapur.

2. Maharashtra State Road

Transport Corporation.

Through its Divisional Traffic Officer,

MSRTC, Chandrapur.

3. Maharashtra State Road

Transport Corporation.

Through its Divisional Controller,

MSRTC, Chandrapur.

Chandrapur.

..... **Respondents.**

CORAM :- Smt. R. V. Mete, Judge.

Appearance :

Shri. M. M. Wankhede, Ld. Counsel for the complainant.

Shri. B. M. Patil, Ld. Counsel for the respondents.

(ORDER ON PRELIMINARY ISSUE NO.1 & 2)

(Passed on 26th July, 2024)

This is a complaint filed under Sec.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 “the Act “for the sake of brevity).

2] The brief facts of the present application are as under :

The complainant is working as conductor with the respondent corporation since the year 2017. At present she is attached to Chandrapur depot and is working under the control and supervision of the respondent no.1. Her service record is clean and unblemished. Respondent corporation has issued charge sheet dated 02.11.2022 under clauses 62(1), 62(3), 62(4), 63(b) and 25 of of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation levelling false and concocted charges against her. It was alleged in the charge sheet that on 17.10.2022, when the complainant was discharging her duty as conductor on the bus bearing No. MH-40/N-9420 plying on Wani -Chandrapur route, the said bus was checked by the checking squad at Ghugus Bus Stand. At the time of checking it was found that, there were total 80 passengers travelling in the bus, out of them, 9 passengers who were travelling from Wani -Chandrapur were found without ticket. It was alleged that the complainant has collected fare charges of Rs. 810/- from them but did not issue

them tickets till checking of the bus. It was further alleged that one blank ticket was recovered from the group of alleged without ticket passengers wherein ticket number 3851 was written by the complainant. It was further alleged that the alleged passengers have paid Rs. 1000/- to the complainant towards fare charges but complainant issued blank ticket by mentioning number 3851 upon that ticket and also on back side of ticket refund amount of Rs. 200/- was mentioned. It was also alleged by the respondent that when the checking staff was busy in checking the bus, at that time complainant hurriedly tried to obtain tickets from ETI machine, but during that transaction wrong ticket was printed from Ghuggus to Chandrapur vide denomination of Rs. 360/-. It was further alleged that when the checking staff demanded the said ticket denomination of Rs. 360/- then she chewing that ticket and picked it. It was further alleged that the complainant has committed various irregularities while discharging her duty. It was alleged that the complainant has tried to misappropriate the amount of Rs. 810/-.

3] Complainant has submitted reply to the said chargesheet on 03.02.2022. Without conducting his reply to the chargesheet the respondent has initiated departmental enquiry against him. Enquiry conducted against him is not legal, fair, proper and in accordance with the principles of natural justice. The findings recorded by the enquiry officer are perverse. The enquiry officer has played a role of enquiry officer as well as prosecutor, who himself put questions by way of cross examinations to the complainant. The impugned punishment order dated 10.03.2023 is illegal. The

complainant was awarded two different punishments for single misconduct which is nothing but double jeopardy, which is not permissible in the eyes of law.

4] Bare perusal of reports it reveals that in first report it is mentioned that there was total 108 passengers travelling in the bus, in second report it shows 54 passengers were travelling and in the third report it shows 80 passengers were travelling in the passengers. As such, the checking staff trying to entangle the complainant in false case. The complainant had already issued tickets to all the alleged 9 ticket passengers vide ticket bearing No. 3883 for Ghuggus to Chandrapur as they were boarded from Ghuggus but the checking staff trying to create picture that all 9 passengers were boarded from Wani which is totally illegal. Bare perusal of inspection report as well as ticket wise collection report it reveals that more than 100 passengers were travelling in the bus but same were not considered by the enquiry officer before recording its findings. There was no intention of the complainant to grab or misappropriate the amount of respondent corporation.

5] On the basis of these grounds the complainant has sought the relief of declaration, quashing and setting aside the impugned show cause notice. For these reasons, she has contended that the enquiry conducted against her is not fair and proper. Therefore, lastly she prayed to give findings on preliminary issues no.1 & 2 in her favour.

6] The respondents have resisted the application by filing

composite reply cum written statement at Exh. C-6. It is not denied that at present complainant is attached to Chandrapur depot and is working under the control and supervision of respondent no.1. It is denied that the service record of the complainant was clean and unblemished. All adverse allegations made by the complainant are denied.

7] It is mentioned that charge sheet dated 02.11.2022 under clauses 62(1), 62(3), 62(4), 63(b) and 25 of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation was issued to the complainant. It is submitted by the respondent corporation that, on 17.10.2022, when the complainant was discharging her duty as conductor on the bus bearing No. MH-40/N-9420 plying on Wani -Chandrapur route, the said bus was checked by the checking squad at Ghugus Bus Stand. At the time of checking, it was found that, there were total 80 passengers travelling in the bus, out of them, 9 passengers who were travelling from Wani -Chandrapur were found without ticket. It is submitted by the respondent corporation that despite collecting fare charges of Rs. 810/- from these 9 passengers at the time of their boarding place but did not issue them fair and proper tickets till the checking of the bus. The complainant allowed them to travel without ticket near about 35 km. despite collecting fare charges from them. There was intention of the complainant to grab that amount. The complainant was received two currency note of Rs. 500/- from the group leader of these 9 passengers towards fare charges from Wani to Chandrapur at the time of their boarding and write back side of the ticket as refundable amount of Rs. 200/-, which was issued while checking the

bus by checking squad by taking disadvantage, as the checking party was busy in the checking of bus. By this way the complainant has tried to issue ticket to those 9 passengers of Rs. 810/- for save herself from the consequences of such misconduct. Reply given by the complainant to the charge sheet was not satisfied and hence departmental enquiry was conducted against him. Complainant participates in the enquiry. Full and fair opportunity was granted to the complainant to participate in the enquiry. Enquiry conducted against the complainant was fair, proper, legal and according to the principles of natural justice. The findings recorded by the enquiry officer are just and proper.

8] It is submitted by the respondents that the complainant while acting as a conductor of the said bus, she was duty bound to discharge her scheduled duties as per the rules of the respondent corporation, but she was made default willfully on her own accord, while discharging her respective duties, which resulted into misconduct as to misappropriation of public fund. Her service record was very bad and blemished. She was lightly punished from time to time for the similar nature of misconduct and was also issued warning from time to time with an intention to improve herself but, in vain. Thus, fine was also imposed upon her. She is not entitled for any relief as prayed. Therefore, lastly prayed to give findings on preliminary issue no.1 & 2 in their favour.

09] In view of the rival pleadings of parties, I have framed issues vide (Exh.O-1), 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 thereunder :-

ISSUES

FINDINGS

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

REASONS

10] I have heard Shri M. M. Wankhede counsel of the complainant and Shri B. M. Patil, learned counsel for respondents.

11] The complainant relied upon the documents. Those documents are – Charge sheet dated 02.11.2022, Reports dated 17.10.2022,18.10.2022, Statement of W.T. passenger and driver of bus dated 17.10.2022, Inspection report dated 09.05.2022, Way bill ticket wise report dated 17.10.2022 Reply to the charge sheet dated 09.11.2022, Letter dated 26.11.2022 and 12.12.2022, Application dated 30.11.2022, Enquiry proceeding dated 06.01.2023, 09.01.2023 & 16.01.2023, Transfer Order dated 29.11.2022 Show cause notice dated 10.03.2023 & findings drawn by enquiry officer.

AS TO ISSUE NOS.1 & 2 :-

12] Both these issues being interlinked, they are being discussed together for the sake of convenient discussion.

13] 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] At the outset, it is also necessary to mention here that the enquiry officer must follow the minimum of fair procedure. This minimum procedure refers the principles of natural justice. Natural justice implies fairness, reasonableness, equity and equality. It is pertinent to note here that the fate of the delinquent depends upon the report of the enquiry. The enquiry officer in a departmental enquiry is having a pious role as ultimately he is required to find out the truth and while doing so, the evidence produced by the delinquent during the enquiry is required to be considered and gone into. The enquiry officer has to objectively record the evidence, analyses the evidence and submit the report to the disciplinary authority giving his findings as to whether the charges against the delinquent are proved or not.

15] Therefore, the enquiry officer owes an important duty though his findings can be based even on circumstances or preponderance of probabilities but at least relevant part of the evidence is required to be discussed by him in his report. The findings should be arrived at on the basis of some evidence or even on the basis of preponderance of probabilities. For my opinion, I am guided by the observations

in the case of :- **P.A. Karkhanis -V/s- UCO Bank & Ors., reported in 2009 (4) ALL MR 511.** In view of the above guidelines, it is to be seen whether in this case the enquiry officer has followed the minimum of fair procedure, or not.

16] At the outset, it is also necessary to mention here that it is one of the fundamental principle of natural justice that when the delinquent does not admit his misconduct the enquiry officer shall proceed to record evidence in support of the charges as is available and necessary to support the charges. As far as possible, the witness shall be examined direct in presence of the delinquent who shall give an opportunity to cross-examine them.

17] The learned Counsel for the complainant argued that the enquiry conducted against the complainant was against the principles of natural justice. He has pointed out that the enquiry officer has acted as a prosecutor during the enquiry. He has put up the question to reporter in order to get answers against the complainant.

18] Per contra, the learned counsel for respondents argued that the enquiry was conducted in accordance with the principles of natural justice. The complainant was provided the charge sheet and all the documents relied upon by respondents. She was given reasonable opportunity to defend the enquiry. As such, the enquiry is fair and proper.

19] Perusal of record shows that complainant has challenged the impugned show cause notice of dismissal. According to respondents, it was issued by them, when

charges of misconduct were proved against complainant on the basis of evidence available in the enquiry proceeding. Against this, complainant submits that there was violation of principles of natural justice and there was no evidence available in enquiry to prove alleged charges of misconduct. No opportunity was given to the complainant to defend enquiry. Therefore, consequently, issuance of impugned show cause notice of dismissal is illegal one. Thus, apparently, it is explicit that base of issuance of impugned show cause notice lies in enquiry proceeding. Therefore, Court has to enter into enquiry proceeding in order to see whether the enquiry conducted against the complainant fair or not.

20] In this context, on going through the enquiry proceeding, it appears that the enquiry officer has examined the reporter and cross-examined the complainant. The questions were put up to the reporter in the form of leading questions directly suggesting the answers. Thus, the enquiry officer has acted as a prosecutor. It is well settled principle of natural justice that the prosecutor can not be a judge in his own case. If such practice is adopted, the possibility of being biased or predetermined conclusion against the delinquent cannot be ruled out. As such, I found force in the submission of learned Counsel of complainant.

21] On perusal of the enquiry proceeding it appears that Enquiry officer examined reporter Shri. Kishor Kulange in enquiry. Perusal of the enquiry proceeding in respect reporter Shri. Kishor Kulange, dated 06.01.2023, it is revealed that the enquiry officer has not recorded examination in chief but adopted unknown procedure because reporter Shri.

Kishor Kulange, has only stated that his report is his statement. This is the only examination in chief. Thus, manner of recording evidence of the witnesses is unknown to law. It is not known from where enquiry officer has borrowed this procedure. Thus, he has conducted the enquiry in utter disregard to the service conditions rules and the principle of natural justice. Therefore, also the enquiry is not fair and proper.

22] Secondly, while going through the record, it is seen that second and third charge levelled against complainant is as per clause 62(3) & 62(4) i.e. After recovering fair charge not issuing ticket to the alighting passenger and not issuing ticket to the alighting passenger within stipulated time, while in this case the bus of complainant is checked at Ghugus but the alleged without ticket passenger were alighting at Chandrapur. The journey of the said passengers yet not completed. Therefore, it is clear that alleged without ticket passengers are not alighting at Ghugus where the bus was check. Therefore, the said charges leveled against the complainant are not proper. But, this fact is not considered by the enquiry officer while giving findings and given finding that the said charge is proved. Therefore, on that ground also the enquiry conducted against the complainant is not fair and proper and findings drawn by the enquiry officer are perverse.

23] Thirdly, on perusal of charge-sheet, it is alleged that while checking bus by officers of flying squad, it was found that on 17.10.2022, complainant was on duty on bus bearing no. MH-40-N-9420. Total 80 passengers were traveling in such bus. Out of them, 09 passengers traveling without

tickets. Complainant has collected fare charges of Rs. 810/- from them but did not issue them tickets till checking of the bus. The alleged passengers have paid Rs. 1000/- to the complainant towards fare charges but complainant issued blank ticket by mentioning number 3851 upon that ticket and also mentioned refund amount of Rs. 200/- on back side of ticket. Thereafter, when the checking staff was busy in checking the bus, at that time complainant hurriedly tried to obtain tickets from ETI machine, but during that transaction wrong ticket was printed from Ghuggus to Chandrapur vide denomination of Rs. 360/- and when the checking staff demanded the said ticket denomination of Rs. 360/- then complainant chew that ticket and picked it. Therefore, complainant has tried to misappropriate the amount of Rs. 810/-. Such allegations are seriously disputed by complainant and according to her, the said passengers were travelling from Ghugus to Chandrapur. She had issued ticket to alleged 9 passengers but checking officer made false case against her. As such, there was controversy regarding the fact that whether complainant intentionally not recovered fair charge and not issued tickets to the alleged without ticket passengers. In such facts and circumstances, best witnesses would be alleged passengers for proving disputed fact. But, enquiry proceeding discloses that the said material witness was not examined in the enquiry. Therefore, it was not possible for inquiry officer to hold that complainant had intentionally not recovered fair charge and not issued tickets to the alleged without ticket passengers. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant was liable for such loss of

alleged amount, by not issuing tickets to the said passengers, appears to be not based on evidence available before him. Therefore, on that ground also findings drawn by the enquiry officer are perverse.

24] Forthly, perusal of the record, it appears that another charge leveled against the complainant under clause 63(b) for misappropriation of the amount of corporation. But, perusal of the report and statement of allegation in the charge sheet, it is mentioned that complainant tried to misappropriate the amount of corporation. Also, the cash of the complainant was not check at the time of checking. Therefore, it is doubtful that how the enquiry officer given finding that charge 63(b) is proved against the complainant. Therefore, from this it appears that the charges are different than the statement of allegation in the charge sheet. From this material infirmity it is clear that enquiry conducted against the complainant is not fair and proper and findings drawn by the enquiry officer are perverse.

25] Perusal of the record it appears that checking officer prepared three different reports and in all the reports there was difference in the number of passengers travelling in the bus of complainant. Bare perusal of reports it appears that in the first report it is mentioned that 108 total passengers travelling in the bus. In the second report it is mentioned that 54 total passengers were travelling in the bus and in the third report it is mentioned that there were 80 passengers were travelling in the bus of complainant. From this, it appears that the checking officer and the reporter who

has prepared said reports were not confirmed about the total number of passengers travelling in the bus of complainant. From this material infirmity it is clear that whatever the contention of the complainant that checking officer tried to indulge the complainant in false case appears to be true. Therefore, on that ground also the enquiry conducted against the complainant is not fair and proper and findings drawn by the enquiry officer are perverse.

26] On perusal of the finding of enquiry officer, it is revealed that he has just mentioned the stages carried out by him in the enquiry. He has nowhere discussed evidence. On the contrary, he has merely relied on the spot statement of the without ticket passengers. In fact, there are no reasons for his conclusion. The requirement of recording reasons is also one of the facets of natural justice. The reason is the very life of law. When the reason of law once ceases the D. and A. procedure itself generally ceases. Such is the significance of the reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoid uncertainty. When reasons are announced and can be weighed, the complainant can have assurance that the process of correction is in place and working. The reasons for a finding would ensure and enhance the confidence of complainant and would provide due satisfaction to him under our justice dispensation system. What is revealed from the above discussion and from the tenor of the report of enquiry officer that he had already made up his mind to find the complainant guilty. The aforesaid discussion leads the Court to come to the conclusion that the enquiry conducted against the complainant is not fair and

proper.

27] The aforesaid irregularities, lacunae and discrepancies in the enquiry leads the Court to come to the conclusion that the tenor of the report of enquiry officer shows that right from beginning he had made up his mind to find the complainant guilty and therefore only he did not sit in the enquiry with open mind, as a result the enquiry does not appear fair, transparent, impartial, adhering to the principle of natural justice. Therefore, the complainant has satisfactorily proved that the enquiry conducted against her is not fair and proper and the findings drawn by the enquiry officer are also perverse. Hence, issue nos.1 and 2 are given finding in the affirmative. Thus, I proceed to pass the following order.

ORDER

- 1) It is held that the enquiry conducted against the complainant is not fair and proper.
- 2) The findings of the enquiry officer are held as perverse.

Sd/-

(Smt. R. V. Mete)
Judge

CHANDRAPUR.
Date :-26.07.2024.

Labour Court, Chandrapur.