

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by Smt. R. V. Mete)

Complaint (ULP) No. 14/2023

(CNR NO.MHLC340001042023)

Exh.O-2

Jibraill Khan Jahangir Khan Pathan,
Aged about- 57 years, Occu- Service,
R/o. Kurkheda, Tah : Kurkheda,
Distt : Gadchiroli.

.... Complainant.**-:- VERSUS -:-**

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.
2. The Divisional Traffic Superintendent,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.

..... Respondents.**CORAM :- Smt. R. V. Mete, Judge.****Appearance :**

Shri. J. M. Patil, Adv. for the complainant.

Shri. U. V. Deshpande, Adv. for the respondents.

(ORDER ON PRELIMINARY ISSUE NOS.1 & 2)

(Passed on 28.03.2025)

This is a complaint filed under Section 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 “MRTU & PULP Act” for the sake of brevity).

02. The case of the complainant in brief can be described as follows :-

The complainant has filed instant complaint in the capacity of employee/workman challenging the legality and validity of impugned second show cause notice dated 15.04.2023 passed by the respondent no.2. The respondent corporation is registered under the Companies Act and hence it is an ‘industry’ u/s 2(s) of the Industrial Disputes Act, 1947 and complainant being a conductor is a ‘workman’ u/s 2(s) of the Industrial Disputes Act, 1947.

03. Initially, the complainant was appointed with the respondent corporation as a conductor in the year 1993 and he was posted at Gadchiroli depot. At the time of his dismissal, he was attached to Gadchiroli depot. His service record was clean and unblemished.

04. A charge sheet dated 30.12.2022 was issued to the complainant levelling charges under clauses 7(c), 7(d), 12(b) and 10 of Discipline and Appeal Procedure of the respondent corporation for the alleged misconduct dated 10.12.2022. He has replied the charge sheet on 13.01.2023 and thereby brought all true material facts to the notice of respondent corporation. In the charge sheet it was alleged that while complainant was discharging his duties on bus bearing No. MH-07/C-9380 plying from Gadchiroli to Kurkheda via Saverkheda route, the bus was checked on 10.12.2022 at 17:00:00 hours earlier to reaching the

village Kadholi. At that time there were total 38 passengers travelling in the bus. But, reporter alleged that there were only 10 passengers travelling in the bus, out of which five were found without ticket, who were travelling from Armori to Kadholi. Complainant has collected fare of Rs. 200/- at the place of their boarding but did not issue tickets to them till checking of the bus. Actually, there were total 38 passengers travelling in the bus. ETI machine became totally discharged earlier to Armori in the route and thus he has issued tickets manually from his ticket tray to some passengers. There were 28 passengers boarded in the bus from Armori and thus, the complainant was used to issue ticket tray. Since last 10 years the complainant was never used ticket tray for issuing tickets thus delay was caused in issuing tickets to the passengers. Process of issuing tickets was going on in the meanwhile bus was checked. There was no stop where the bus was checked. There was no allegation in the report as well as in the chargesheet that the passengers were found without ticket while alighting them from the bus. The bus was not checked at village Kadholi but was checked earlier to the village Kadholi.

05. The passengers who were alleged to be travelling without ticket were boarded in the bus from Armori towards their further journey till Kadholi. Statement of passengers were obtained under pressure and threatened. Statement of passengers were written by one passenger Sangita Hedau as per the direction and dictation of member of checking squad and complainant was pressurized to sign the same. Passengers are

not examined in the enquiry and hence complainant deprived his right of cross examination of witnesses. Reasonable and fair opportunity was not given to the complainant to defend his case in the enquiry. His defence statement given in the enquiry is not considered by the enquiry officer in proper manner. Amount with the complainant was proper and there was no less cash with him. Relevant and material documents are not supplied to the complainant during enquiry. In the enquiry reasonable and fair opportunity was not granted to the complainant to defend his case. The enquiry conducted against the complainant is not legal, fair, proper and in accordance with the principles of natural justice.

06. Alleged incident took place on 10.12.2022 and hence new Discipline and Appeal Procedure was made applicable to the complainant at the relevant time, but the respondents have issued Chargesheet and impugned show cause notice of dismissal was issued to the complainant under old Discipline and Appeal Rules of the respondent corporation which is contrary to the provisions of law and rules. Complainant never committed indiscipline against the rules of the respondent corporation and hence, clause 10 is not made applicable in the instant case. Findings of enquiry officer are perverse. Enquiry officer himself put leading questions to the reporter, which is contrary to the provisions of law. In the enquiry, though representative of complainant had asked some questions to the reporter and he has answered the questions which were in favour of complainant, but enquiry officer has not taken those answer on record. Thus, enquiry officer acted malafidely. In the

enquiry the enquiry officer has not examined another co-member of checking squad and alleged without ticket passengers though requested by the complainant and thereby complainant has been deprived to cross examine those material witnesses. Statements of passengers were not recorded in presence of complainant. Enquiry officer himself issued charge sheet and also conducted enquiry. Respondent no.2 also issued second show cause notice dated 15.04.2023 calling explanation from the complainant as to why proposed punishment of dismissal should not be imposed against him. Respondent no.2 acted against the settled position of law as well as against their new Discipline and Appeal Procedure. Enquiry officer acted as a Judge and Prosecutor. Enquiry officer has not examined driver of the bus in the enquiry. The complainant has not committed any misconduct. Charges levelled against the complainant are not proved in the enquiry. The punishment is shockingly disproportionate to the charges levelled against him. It is not in good faith but in colourable exercise of employer's right. On these grounds, the complainant has prayed for declaration that the enquiry conducted against the complainant is not legal, fair, proper and according to the principles of natural justice, and that the findings recorded by the enquiry officer are perverse.

07. The respondents have resisted the application by filing composite reply cum written statement at (Exh. C-09) and denied all adverse allegations levelled against them. It is submitted that the application is false, bogus and baseless and hence, it is liable to be rejected. It is denied that service record of the complainant is clean and unblemished. It is denied that

complainant is a 'workman' and respondent is an 'industry' within the meaning of section 2(s) and 2(j) of the Industrial Disputes Act, 1947 respectively. It is denied that respondents did not consider reply to chargesheet given by the complainant in proper manner and directly issued impugned second show cause notice of dismissal dated 15.04.2023 which is illegal and void ab initio. It is denied that his defence statement was not considered in proper manner by the enquiry officer. It is denied that material and relevant documents were not supplied to the complainant during enquiry and he was not given an opportunity to cross examine the material witnesses i.e. without ticket passengers, another co member of checking squad and driver of the bus.

08. By special pleadings the respondent corporation has submitted that the complaint as well as an application as framed and filed by the complainant is itself not tenable in the eyes of law. The complainant was appointed as a conductor by the respondent corporation. It is submitted that on 10.12.2020, when the complainant was discharging his duty as a conductor on bus bearing No. MH-07/C-9380 plying from Gadchiroli to Kurkheda, it was checked by the checking squad at Kadholi and it was found that 5 passengers were travelling without ticket. Though complainant has collected fare amount from the alleged without ticket passengers at the place of their boarding but did not issue tickets to hem till checking of the bus. Checking staff recorded the statement of passengers on the spot. Respondent issued charge sheet dated 30.12.2022 to the complainant and conducted enquiry fair, proper and according to the principles of

natural justice. The complainant has participated in the enquiry and filed reply to charge sheet in enquiry. Charges were proved against the complainant in the enquiry. Thereafter, respondent corporation had issued second show cause notice of dismissal dated 15.04.2023 and thereby decided to dismiss the complainant from service. Enquiry officer has followed the principles of natural justice while conducting enquiry. Enquiry conducted against the complainant is fair, proper, impartial and in accordance to principles of natural justice. Complainant has committed serious misconduct while discharging his duty, which has been proved in the enquiry and hence impugned punishment of dismissal is legal and proper. Complainant was given fair, proper and reasonable opportunity while conducting enquiry against him. Findings of enquiry officer are based upon record available in departmental enquiry and hence findings of enquiry officer are just and legal. It is further submitted that if this court comes to the conclusion that the departmental enquiry conducted against the complainant is unfair and improper then reserve its right to prove charges against the complainant by adducing evidence before the court. Punishment proposed against the complainant is proportionate to the charges proved against the complainant.

09. On these grounds, the respondents have prayed for declaring that the enquiry conducted against the complainant is legal, fair, proper and according to the principles of natural justice and findings recorded by the enquiry officer are just, legal and proper.

10. In view of the rival pleadings of the parties, I have

framed issues vide (Exh.O-01), 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 : In the affirmative. enquiry was conducted against him is in violation of principles of natural justice and is vitiated ?
- 2) Does complainant prove that the : In the affirmative. findings recorded by enquiry officer are perverse ?

REASONS

11. I have heard Shri J. M. Patil learned advocate for the complainant and Shri U. V. Deshpande, learned advocate for the respondents.

12. The complainant relied upon following documents :

- 1] Copy of Chargesheet dated 30.12.2022.
- 2] Copy of Report dated 15.12.2022.
- 3] Copy of statement of alleged without ticket passengers dated 10.12.2022.
- 4] Copy of statement of complainant dated 10.12.2022.
- 5] Copy of cash inspection report dated 10.12.2022.
- 6] Copy of ceased ticket dated 10.12.2022.
- 7] Copy of way bill.
- 8] Copy of reply to chargesheet dated 13.01.2023.
- 9] Copy of impugned show cause notice dated 15.04.2023.
- 10] Copy of findings.

13. In support of their case the respondents have relied

upon following documents :

- 1] Copy of letter dated 08.04.2023 issued by Labour Officer to Divisional Traffic Superintendent.
- 2] Copy of report submitted by Divisional Traffic Superintendent, Gadchiroli to Divisional Controller, Gadchiroli dated 06.04.2023.
- 3] Copy of letter dated 06.04.2023 issued by Divisional Traffic Superintendent to Labour Officer, MSRTC, Gadchiroli.
- 4] Copy of attendance report of complainant in enquiry.
- 5] Copy of inspection report dated 15.12.2022.
- 6] Copy of statement of complainant.
- 7] Copy conductor's cash inspection report dated 10.12.2022
- 8] Seized tickets from conductor.
- 9] Copy of Way Bill.
- 10] Copy of chargesheet dated 30.12.2022.
- 11] Copy of suspension order dated 30.12.2022.
- 12] Copy of reply to chargesheet of complainant dated 13.01.2023.
- 13] Copy of letter dated 02.03.2023 in respect of enquiry.
- 14] Copy of letter dated 17.03.2023 in respect of enquiry.
- 15] Copy of enquiry proceedings dated 20.03.2023.
- 16] Copy of past service record of complainant.
- 17] Copy of Show Cause Notice dated 15.04.2023.
- 18] Copy of findings of enquiry officer.

AS TO ISSUE NOS.1 & 2

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

15. 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.

16. 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, analyze 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.

17. 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.

18. 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.

19. The counsel for the complainant argued that the enquiry conducted against the complainant was against the principles of natural justice. No fair opportunity to defend in the enquiry is given to the complainant. 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.

20. 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. He was given reasonable opportunity to defend the enquiry. As such, the enquiry is fair and proper.

21. Perusal of record shows that complainant has challenged the impugned show cause notice of dismissal order.

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. No opportunity was given to the complainant to defend enquiry. Therefore, consequently, issuance of impugned show cause notice of dismissal order is illegal one. Thus, apparently, it is explicit that base of issuance of impugned show cause notice of dismissal order 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.

22. In this context, on perusal of the enquiry proceeding in respect reporter dated 20-03-2023 it is revealed that the enquiry officer has not recorded examination in chief of reporter but adopted unknown procedure because reporter has stated that his report is his statement. he only identified his signature on the report and admitted the contents therein to be true and correct. This is the only examination in chief. This 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 principles of natural justice. Therefore, the enquiry is not fair and proper.

23. Secondly, on going through the enquiry proceeding document no.14, 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 can not be ruled out. As such , I found force in the submission of learned counsel for complainant.

24. Perusal of charge-sheet and inquiry proceeding, it will find that one and the same officer had issued charge-sheet and conducted enquiry in the capacity of inquiry officer and decided the enquiry. It is settled principle of law that a person cannot be a judge in his own case. But, said principle is not followed in present proceeding. Therefore, there appears to be a substance in the argument of complainant that enquiry was not conducted fairly and properly.

25. Perusal of the record, it appears that another charge leveled against the complainant under clause 12(b) for misappropriation of the amount of corporation. But, perusal of the statement of allegation in the charge sheet and report, no where it is mentioned that complainant misappropriated the amount of corporation. Also the cash of complainant is not down by checking officer at the time of checking. Therefore, from this it appears that the charges are different than the statement of allegation in the charge sheet and report. But, this fact is not consider by the enquiry officer at the time of drowing findings. Also it is the contention of respondents that the complainant misappropriate the amount of corporation. But perusal of

record it appears that if complainant want to misappropriate the amount of corporation by not issuance of ticket to alleged W.T passengers then the cash of complainant needs to be found excess but it is found correct. But, this fact is not consider by the enquiry officer at the time of drowing findings. On that ground also, enquiry conducted against the complainant is not fair and proper and findings drown by the enquiry officer are perverse.

26. On perusal of charge-sheet, it will find that it is alleged that while checking bus by officers of flying squad, it was found on 10.12.2022, he was on duty on bus bearing no. MH-07-C-9380. Total 10 passengers were travelling in such bus. The complainant recovered full fare charges of Rs.200/- from alleged 5 passengers those who are travelling from Armori to Kadholi but not issue ticket till checking spot. Such allegations are seriously disputed by complainant and according to him, he had received fair charge from the said 5 passenger but as he was issuing tickets to the alleged passenger the bus was check by the checking officer and checking officer snatch the ticket tray from the hand of complainant. Therefore, he was unable to issue tickets to the alleged passengers. As such, there was controversy regarding the fact that whether complainant was issuing tickets to the said passengers or not. In such facts and circumstances, best witnesses would be alleged passengers for proving disputed fact. But, enquiry proceeding discloses that the said material witnesses was not examined in the enquiry. Therefore, it was not possible for inquiry officer to hold that complainant had intentionally not issued tickets to the alleged

passengers. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant has committed misappropriation of alleged amount, appears to be not based on evidence available before him. On that ground also, enquiry conducted against the complainant is not fair and proper and findings drawn by the enquiry officer are perverse.

27. 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 said passengers and the complainant. 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.

28. The aforesaid irregularities, lacunaes 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 principles of natural justice. Therefore, the complainant has satisfactorily proved that the enquiry conducted against him is not fair and proper and the findings drawn by the enquiry officer are also perverse. Hence, issue no. 1 and 2 are given finding in the affirmative. Thus, I proceed to pass the following order.

ORDER

- 1) It is hereby declared that enquiry conducted against the complainant is not fair and proper and in accordance with the principles of natural justice.
- 2) It is hereby declared that the findings of the Enquiry Officer are perverse.

C H A N D R A P U R.
Date :- 28.03.2025

(Smt. R. V. Mete)
Judge
Labour Court, Chandrapur.

(Smt. R. V. Mete)
Judge, Labour Court, Chandrapur.