

**BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**

**Complaint (ULP) No.58/2022**

(CNR NO.MHLC340001712022)

**Exh.No.O-2**

Anand Jagdish Joshi,  
Age 51 Years, Occu : Service,  
R/o. Vitthal Mandir Ward,  
Chandrapur,  
Tah. & Dist. Chandrapur.

**.... Complainant.**

**-:- VERSUS -:-**

1. Maharashtra State Road Transport Corporation, Chandrapur Division Chandrapur – through its Divisional Controller.
2. The Divisional Traffic Officer, Maharashtra State Road Transport Corporation, Chandrapur.
3. The Divisional Traffic Supdt.(Dfl.) Maharashtra State Road Transport Corporation, Chandrapur.  
Office of all above at Tukum,  
Durgapur Road, Chandrapur,  
Tah. & Dist. Chandrapur.

**..... Respondents.**

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

**Appearance :**

Shri. V. M. Shikare, Ld. representative for the complainant.

Shri. U. V. Deshpande, Ld. Counsel for the respondents.

---

**(ORDER ON PRELIMINARY NOS.1 & 2 )**

(Passed on 09 June, 2023)

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 “the Act “for the sake of brevity)

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

The complainant is working with the respondents as a Conductor continuously from the year 2002. His service record was clean and unblemished. The respondent no.1 is the representative of MSRT Corporation for Chandrapur Division and also appointing authority of the complainant. The respondent no.2 is the authority who acted as a Disciplinary Authority. The past service record of the complainant is clean and unblemished.

**03.** It is contended that respondents issued charge-sheet to the complainant on 29.06.2022, alleging that while performing his schedule duty on 26.05.2022 on Gondpipri to Rajura route on Bus bearing no.MH-07-C-9378. His bus was checked at Somanpalli and found that out of in all 53 passengers in the bus, a group of 6 passengers found travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpipri to Somanpalli. The complainant after seeing the checking squad issued this lower

denomination of tickets by collecting full fare from these passengers. When the ST cash of complainant verified, which was found to be correct.

**04.** The complainant has replied to the aforesaid charge sheet and denied the charges leveled against him. It was specifically mentioned that the false case is book by the checking squad and hence the complainant has demanded the chance of cross-examined of all the concern and relevant witnesses in the enquiry. The respondent no.3 has conducted illegal enquiry and thereafter, the respondent no.2 has issued impugned show cause notice dated 23.11.2022 proposing punishment of dismissal of the complainant which is illegal, unlawful and against the principles of natural justice. The respondent no.1 being appointing authority has not appointed to the enquiry officer. The respondent no.2 is not the appointing authority of the complainant. The respondent no.2 also can not act as a disciplinary authority. The enquiry officer has failed to call the relevant witnesses in the enquiry and also not given the chance of examination of the concern passengers.

**05.** On 29.06.2022, the respondents issued the charge sheet with the alleged misconduct falling under Item no.62(1), 62(3), 62(4), 63(b) and Section 25 of Schedule of Discipline and Appeal Procedure of MSRTC. The complainant replied the charge sheet on 30.07.2022 and denied the charges leveled against him. The respondents conducted the enquiry against him and thereafter issued impugned show cause notice dated 23.11.2022. According to him, impugned show cause notice dated 23.11.2022 is illegal and unlawful.

At present, complainant is in service. On the basis of impugned show cause notice, respondents are intending to dismiss the complainant from service.

For the above mentioned reasons, he has contended that the enquiry conducted against him is not fair and proper. So, he has prayed to give findings on the issue no.1 and 2 in his favour.

**06.** The respondents have filed their written statement vide (Exh.C-6) and resisted the claim. It is denied that complainant is working with the respondents as a conductor from the year 2002 continuously with the unblemished past service record. It is denied that the respondent no.1 is the representative of MSRT corporation for Chandrapur Division and also the appointing authority of the complainant. It is denied that respondent no.2 is the authority who acted as a disciplinary authority.

**07.** It is submitted that in the special pleading that the complainant has appointed as a conductor by the respondents. On 26.05.2022 when the complainant was discharging his duty as a conductor on bus bearing no. MH-07-C-9378 running from Gondpipari to Rajura which was checked by the checking staff of respondent and they found that out of 8 passengers travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpipari to Somanpalli and the complainant after seeing the checking squad issued this lower denomination of tickets by collecting full fare from these passengers. Therefore, checking staff recorded the statement of passengers. The respondent issued the charge sheet to complainant of dated 29.06.2022 and conduct the fair departmental inquiry against the complainant.

The complainant was participated in that departmental proceeding and filed the reply before the departmental proceeding this is headed by the respondent. After that, the enquiry officer founded that charge upon the complainant for 8 passengers travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpapari to Somanpalli and the complainant after seeing the checking squad issued this lower denomination of tickets by collecting full fare from these passengers. The charges are proved against the complainant after the conduct of fair enquiry. Thereafter, respondent had issued the show cause notice of dismissal dated on 23.11.2022 and thereby decided to dismiss the complainant from service. That the enquiry officer has been followed the principles of natural justice and conducted the fair and impartially departmental proceeding against the complainant. The complainant has given fair, proper and reasonable opportunity while conducting departmental enquiry and thereby principles of natural justice was followed and the enquiry conducted by the respondent is legal, fair and proper and the findings drawn by the respondent is absolutely on the basis of record available in departmental enquiry and as such no perversity as alleged has been done by the respondents. Therefore, impugned show-cause notice of dismissal was issued to the complainant legally. Other adverse allegations are denied by respondents.

For the above mentioned reasons, they have prayed to give findings on issue nos.1 and 2 in their favour.

**08.** 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 enquiry conducted against him is not fair, proper and in violation of principles of natural justice ? : In the Affirmative
- 2) Does the complainant prove that the findings of enquiry officer are perverse ? : In the Affirmative

**REASONS**

**09.** Heard Shri V. M. Shikare, representative for the complainant and Shri U. V. Deshpande, learned Counsel for the respondents.

**10.** To establish the case of complainant, complainant relied upon the documents. Those documents are - Charge sheet dated 29.06.2022. Checking report dated 03.06.2022, Statement of passengers dated 26.05.2022, Inspection report dated 26.05.2022, Cash verification report dated 26.05.2022, Reply dated 30.07.2022 to the charge sheet, Enquiry proceeding dated 02.09.2022, Defence Statement dated 15.09.2022, Enquiry proceeding dated 15.09.2022, Findings drawn by the enquiry and show cause notice of dismissal dated 23.11.2022.

**AS TO ISSUE NOS.1 & 2**

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

**12.** 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.

**13.** 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, analyse 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.

**14.** 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.

**15.** 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.

**16.** The representative 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.

**17.** 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.

**18.** 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.

**19.** In this context, on perusal of the enquiry proceeding in respect reporter Shri. Nilesh Junghare, dated 02-09-2022, it is revealed that the enquiry officer has not recorded examination in chief but adopted unknown procedure because Shri. Nilesh Junghare, has only identified his signature on the report and admitted the contents therein to be true and correct and stated that my report is my statement. 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, also the enquiry is not fair and proper.

**20.** Secondly, on going through the enquiry proceeding document no.1, it appears that in the enquiry 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.

**21.** Perusal of record, it appears that the respondents have initiated the enquiry against the complainant as per New Discipline & Appeal Procedure. In the said new Discipline & Appeal Procedure there is a specific provision that Divisional Traffic Officer will be Competent Authority and Divisional Traffic Superintendent will be the enquiry officer. However, in the present matter, the charge-sheet and show cause notice has been issued by Divisional Traffic Officer as the Competent Authority and thereafter the enquiry was also conducted by Divisional Traffic Officer. No enquiry officer is appointed to conduct the enquiry therefore, the whole enquiry procedure conducted against the complainant is against the new Discipline & Appeal Procedure. There is a breach of Discipline & Appeal Procedure. Therefore, whole enquiry procedure is vitiated.

**22.** Perusal of the enquiry proceeding it appears that the complainant has placed on record, his reply to the charge sheet dated 30-07-2022 (document no. 6) with list (Exh. U-3) on perusal of which, it is revealed that he has requested the enquiry officer to examine the alleged passengers. However, these witnesses are not at all examined in the enquiry. In my opinion, even if the charges under departmental enquiry are not required to be proved in criminal trial, one cannot cost site of the fact that the enquiry officer performs a quasi judicial function, who upon analyzing the document must arrive at conclusion

that there had been a preponderance of probability to prove the charges on the basis of material on record. While doing so, the enquiry officer cannot reject the testimony of witnesses only on the basis of surmises nor he can reject the request of delinquent employee for examination of material witnesses on whose evidence the decision in the enquiry is rested. If the departmental enquiry is not firmly conducted, the inference can be drawn that the complainant was prejudiced thereby. Therefore, in my opinion, when the enquiry officer has not considered the request of the complainant for examination of material witnesses as discussed above, certainly great prejudice has been caused to his defence which needs to be set at rest during the trial.

**23.** Moreover, it appears from the enquiry proceeding that the enquiry officer has relied on the statement of alleged six passengers. In other words, he has relied on the document of preliminary enquiry. It is pertinent to mention here that the preliminary enquiry is made only to find out whether a disciplinary enquiry can be initiated against the delinquent. The evidence recorded in the preliminary enquiry cannot be used in regular enquiry for the reason that the delinquent is not associated with the preliminary enquiry. Under such circumstance, the enquiry officer ought to have called upon the alleged passengers in the departmental enquiry for their evidence by ensuring opportunity to the complainant to cross examine them. However, he has adopted method which is in violation of the principles of natural justice. Therefore, the enquiry conducted against the complainant is not fair and proper. As such, complainant could not get fair and proper opportunity to prove his defence.

**24.** Perusal of the record, it appears that the charge leveled against the complainant under clause 63(b) for misappropriation amount of the corporation. And in the statement of allegation in the charge sheet, it mentioned that complainant recovered Rs.20/- each fare charge from the alleged 6 passengers and issued lower denomination ticket of Rs.60/- therefore, complainant tried to misappropriate the amount of Rs.90/- of corporation. But, perusal of the findings, it appears that the enquiry officer given finding to the said charge that after recovering fare charge of Rs.120/- from the alleged tickets passenger, complainant issued lower denomination tickets of Rs.60/- and given freedom to the said passenger to travel on lower denomination of tickets and therefore, complainant tried to misappropriate an amount of Rs.90/-. Therefore, the said charge proved against the complainant. Perusal of the findings of the inquiry officer to this charge, the enquiry officer no where mentioned how the complainant tried to misappropriate the amount of Rs.90/- of the corporation when it is specific case of the respondent that the complainant recovered total amount of fare of Rs.120/- and issued lower denomination ticket of Rs.60/-. Therefore from this, it is clear that the enquiry conducted against the complainant is not fair and proper and findings drawn by the enquiry officer are perverse i. e. without considering the documentary evidence in the enquiry.

**25.** Perusal of the record, it appears that the another charge leveled against the complainant is as per clause 62-A i. e. without any reason complainant at fault to issue any ticket to the passenger and given freedom to the said passenger to travel without ticket. But

perusal of the record, it appears that in the statement of allegation in the charge sheet, it is mentioned that complainant issued lower denomination tickets to the alleged 6 passengers. From this, it is clear that there is no without ticket passengers in the bus of the complainant but without considering this fact, the enquiry officer given finding to the charge that it is proved against the complainant. Therefore, on that ground also, it is clear that the enquiry officer without considering the material facts on record given finding to the said charge is proved against the complainant.

**26.** Perusal of the record, it appears that in the charge sheet, it is alleged while checking of bus by officers of flying squad, it was found that complainant was on duty on the said bus and total 53 passengers were traveling in such a bus. Out of them, a group of 6 passengers were traveling from Gonjoli to Somanpalli found traveling on lower denomination tickets, complainant collected the fare of Rs.120/- from them. But did not issue tickets from Gondpipari to Sonampalli of Rs.60/- to the 6 passengers. Hence, the said 6 passengers were traveling from Gondpipari to Sonampalli found traveling on lower denomination of ticket at the time of checking of the bus to the checking squad. Such a allegations are seriously disputed by the complainant and according to the complainant he had issued proper ticket to all passengers. As such, there was controversy regarding the fact that whether the complainant issued proper ticket to the said passengers or not. And whether the said passengers were traveling from Gondpipari to Sonampalli. In such a facts and circumstances, best witness would be alleged passengers for proving disputed facts. But, enquiry proceeding disclose that the said material witnesses were

not examined in the enquiry. Therefore, it was not possible for enquiry officer to hold that the complainant had not issued proper ticket to alleged without ticket passengers and misappropriate such amount. Therefore in absence of positive evidence against the complainant, it appears that inference drawn by the inquiry officer that complainant issued lower denomination ticket and misappropriate the amount by not issuing tickets to the said passengers appears to be not based on evidence available before him. Therefore, on that ground also the enquiry conducted against the complainant is not fair and proper and findings recorded 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, 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 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.

CHANDRAPUR.  
Date :- 09.06.2023.

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