

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 2362 of 2001

1. T.R.U. Nair, aged about 55 years, son of Raghwan Pillai, Sub Engineer, Nagar Panchyat Takhatpur, Tahsil and District Bilaspur (C.G.)

---- Petitioner

Versus

1. The State Of Chhattisgarh, Through its Secretary Department of Urban Administration and Development, DKS Mantralaya, Raipur.
2. Director, Urban Administration, DKS Mantralay, Raipur.
3. Hon'ble Lokayukt, Through Chief Engineer, Lokayut Karyalay, Lokayut Bhawan, Madhya Pradesh
4. Municipal Council, Manendragarh, through its Chief Municipal Officer, District Korea (C.G.)
5. Nagar Panchayat, Takhatpur, Through its Chief Municipal Officer, Takhatpur, District Bilaspur (C.G.)

---- Respondents

For Petitioner	Mr. Ashish Surana, Advocate
For Respondent/State	Mr. Shashank Thakur, Govt. Adv.
For Respondent No.4	Dr. N.K. Shukla, Sr.Adv. With Ms. Mukta Tripathi, Adv.
For Respondent No.5	Mr. B.L. Sahu, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

16/07/2015

Heard learned counsel for the parties.

1. In this petition under Article 226/227 of the Constitution of India, the petitioner has assailed the legality and validity of the impugned order of termination dated 31.10.2001 passed by the respondent No.5.
2. Pertinent facts, necessary for adjudication of the dispute, are that the petitioner was initially appointed as Sub-Overseer in 1968. He was later on promoted to the post of Sub-Engineer/Overseer in 1994. When the petitioner was transferred showing him as Overseer, he preferred a petition, being M.P. No.3886 of 1985. While deciding the said M.P. No.3886 of 1985, it was observed that the petitioner shall be deemed to have been confirmed on the post of Sub-Engineer. By order dated 03.07.1997, he was transferred from Katangi Municipality to Kondagaon Municipality and thereafter to Akaltara Municipality in July 2000. A show cause notice was issued to him vide Annexure P-4 asking him to show cause as to why departmental enquiry be not constituted against him. An enquiry was eventually constituted against him, wherein, according to the petitioner, documents were not supplied to him and he was only allowed to inspect the record. The respondent No.4 passed an order on 27.03.2000 resolving to terminate the services of the petitioner and recover the financial loss.

3. Mr. Surana, learned counsel appearing for the petitioner, would argue that since the petitioner was holding the substantive post of Sub-Engineer, he could not have been terminated by the Municipality without previous approval of the State Government. He would refer to the provisions contained in Section 94 (4) of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act, 1961') and the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (for short 'the Rules, 1968'). Mr. Surana would further submit that the principles of natural justice have not been followed inasmuch as documents were not supplied and copy of enquiry report was also not served on him.
4. Per contra, Mr. Thakur, learned Govt. Advocate appearing for the State and Dr. Shukla, learned Sr. Advocate appearing with Ms. Mukta Tripathi, learned counsel for the respondent No.4, would submit that the petitioner has been terminated after holding a regular enquiry, wherein, proper and adequate opportunity of hearing was afforded to him. According to them, the enquiry was initiated on the recommendation/reference of Hon'ble Lokayukt and resolution of termination was also sent to the said authority. Drawing attention to the documents available on record, they would submit that the provisions contained in Section 94(4) of the Act, 1961 and the Rules 1968 have been followed, therefore, there is no illegality or irregularity in imposing the penalty of termination.

5. Material available in the record would reveal that while the petitioner was posted as Sub Engineer at Municipal Council, Manendragarh in the year 1995, the petitioner was allegedly involved in rampant corruption, irregularities, interpolation of records, forgery and execution of contracts by putting inflated rates, deviating from guidelines without sanction and thereafter, prepare bills and recommended for payments to the tune of RS.1,42,693/-. A charge sheet was, thereafter, served on the petitioner on the said charges and on completion of enquiry, he has been terminated.
6. It appears the enquiry report dated 06.11.1997 was sent to the State Government and, thereafter, the State Government directed the Municipal Council, Manendragarh to impose major punishment on the petitioner vide its letter dated 15.01.1998. It further appears that the Chief Municipal Officer, Municipal Council, Manendragarh sought approval from the State Government in terms of Section 94(4) of the Act, 1961, however, the State Government wrote back to the said Chief Municipal Officer on 21.05.1999 that the petitioner is working as Sub Overseer, which is not a specified post under Section 94(4) of the Act, 1961, therefore, the Municipal Council is competent to take action. The Council, thereafter, passed a resolution on 27.03.2000 for termination of the

petitioner, which was served upon him by the impugned order.

7. A close reading of the enquiry report would reveal that the charges against the petitioner were of committing financial irregularities causing loss to the Municipality. All the material charges were found proved against the petitioner. It is not a case where the enquiry officer's report is based on no evidence. Thus, in view of the law laid down by the Supreme Court in **General Manager (Operations) State Bank of India and Another v. R. Periyasamy**¹, this Court cannot sit over the findings of the enquiry officer and appreciate the evidence as if this Court is sitting in appellate contradiction. In the said decision the Supreme Court held thus :

9. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*, this Court observed as follows: (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where

1 (2015) 3 SCC 101

they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature of Bombay v. Shashikant S. Patil.)”

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard.

8. The charge sheet served on the petitioner contain a list of witnesses and list of documents. The petitioner has complained of non-supply of documents, however, it has not been specifically urged as to what documents were not supplied to the petitioner and what relevance those documents would have with the nature of charges so that it can be inferred that any prejudice has been caused to the petitioner.
9. It is well settled that in absence of specific pleading as to which documents were sought for, but not supplied by the respondents and how they were connected with the charges levelled against the petitioner, such submission of causing prejudice due to non-supply of documents is liable to be rejected.

10. In **Ramesh Chandra v. Delhi University and Others**², the Supreme Court held thus :

33. It was further submitted that the appellant could not file the proper reply to all the three memoranda due to non-supply of documents sought by him towards submitting an effective reply. However, such submission cannot be accepted in absence of specific pleading as to which were the documents sought for but not supplied by the respondents and how they were connected with the charges levelled against the appellant.

11. The argument concerning violation of Section 94(4) of the Act, 1961 also lacks substance in view of the letter of the State Government dated 15.01.1998, wherein, the State Government has directed the Municipality to impose major penalty upon the petitioner. Although the word “prior approval” or the provisions contained in Section 94(4) is not mentioned in the letter yet it is the settled law that if an authority has the power to perform the function mere non mention of the source of power does not vitiate the exercise.
12. The Supreme Court in **P.K. Palanisamy v. N. Arumugham and Another**³, held thus :

28. In Ram Sunder Ram v. Union of India it was held: (SCC pp. 260-61, para 19)

2 (2015) 5 SCC 549

3 (2009) 9 SCC 173

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See N. Mani v. Sangeetha Theatre, SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

29. In N. Mani v. Sangeetha Theatre it is stated: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

13. In the opinion of this Court this order would amount to substantial compliance of the provisions. It is not a case where the enquiry report was not at all sent to the State Government and the Municipal Council took the decision of its own without

keeping the Government in loop. When the order of termination has been passed on the instructions of the State Government, the provisions contained in Section 94(4) of the Act, 1961 stands complied with.

14. As an upshot, the writ petition, *sans* merit, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri