

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 403 of 2015**

T.R.U.Nair S/o Raghawan Pillai, aged about 70 years, presently residing at Shivshailam Nambiath PO Naranganam, District Pathanamthitta (Kerala) [though in the impugned order mentioned as Sub Engineer, Nagar Panchayat Takhatpur, Tahsil and District Bilaspur, Chhattisgarh]

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration and Development, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. The Director, Urban Administration, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
3. The Honourable Lokayukta, through Chief Engineer, Lokayukt Karyalay, Lokayukt Bhawan, Bhopal, Madhya Pradesh.
4. Municipal Council Manendragarh, through its Chief Municipal Officer, District Korla, Chhattisgarh.
5. Nagar Panchayat Takhatpur, through its Chief Municipal Officer, Takhatpur, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Ashish Surana, Advocate.
For Respondent State/No. 1 & 2	:	Shri Prafull N. Bharat, Additional Advocate General
For Respondent No. 4	:	Shri Shailendra Shukla, Advocate.
For Respondent No. 5	:	Shri B.L.Sahu, Advocate on behalf of Shri A.S.Kachhwaha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****03/09/2015**

1. The present appeal arises from order dated 16.7.2015 dismissing Writ Petition No. 2362 of 2001. The Learned Single Judge held that there being no procedural infirmity in the departmental proceedings, and there being substantial compliance with Section 94 (4) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called 'the Act') as the order of dismissal had been forwarded to the State Government, it called for no interference.

2. Learned Counsel for the Appellant submits that Rule 52 of the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (hereinafter called 'the Rules') required that after submission of the enquiry report, the Disciplinary Authority had to hear the delinquent on merits of the report as well as the punishment. Thus, the delinquent was required to be given a copy of the enquiry report with an opportunity of defence before the Disciplinary Authority. If the enquiry report was not provided, the hearing to be contemplated by the Disciplinary Authority would remain meaningless and an empty formality. Whether the Appellant may have had a defence or not is inconsequential. The statutory provisions had to be complied with first and what may or may not have followed thereafter is not relevant. It was further submitted that under Section 94 (4) of the Act, prior approval of the Government was required as the Appellant was a Sub Engineer, a fact which the State Government did not consider adequately while returning the matter to the Municipality requiring it to verify the same. Mere forwarding the dismissal order on 21.5.1999 was not sufficient.

3. Learned Additional Advocate General appearing on behalf of the State submitted that the State Government had given its concurrence to the dismissal on 15.1.1998 earlier in time to the order dated 21.5.1999 sought to be relied upon by the Appellant.

4. We have considered the submissions on behalf of the parties.

5. The relevant extract of Rule 52 reads as follows:

"52....after he has completed the enquiry, the delinquent shall be heard on merits as well as punishment and a formal notice to show cause need not be served on him."

6. The Appellant in the writ petition specifically asserted at paragraph 5.9 that no copy of the enquiry report was provided to him and neither was he heard on merits by the Disciplinary Authority as well as on the punishment.

Dealing with the same, the counter-affidavit on behalf of the State at paragraph 15 states that the 'contentions provided no benefit to the case of the Appellant'.

7. If the Rules provide that the Disciplinary Authority was to hear the Appellant on merits of the enquiry report as well as the punishment, unless a copy of the enquiry report was first provided to the Appellant, the hearing contemplated would remain an empty formality. The Appellant would be unaware of the reasoning given by the Enquiry Officer and be completely deprived of the opportunity to persuade the Disciplinary Authority either not to accept the enquiry report or even impose a lesser punishment on him. It was rightly submitted that at this stage, the question is not whether the Appellant may or may not have a defence before the Disciplinary Authority. The issue only is whether there has been compliance with the statutory provisions by providing opportunity required according to the Rules. It is therefore evident from the pleadings of the parties that there has been non-compliance of Rule 52 before dismissal was ordered.

8. In (1964) 4 SCR 540 (State of Mysore v. K. Manche Gowda), the Supreme Court observed as follows:

"7....it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show-cause against the proposed punishment...."

9. In view of the aforesaid conclusion, the subsequent issue with regard to Section 94(4) of the Act becomes redundant at this stage.

10. The allegations against the Appellant were of financial defalcation. The mere fact that matters may have been pending since 2001, in the nature of charge, cannot be sufficient justification to consider giving a quietus after holding the dismissal to be bad. The order of punishment dated 31.10.2001 is set aside and the matter is remanded to the Disciplinary Authority for compliance with Rule 52 by supplying a copy of the enquiry report to the Appellant and proceed thereafter in accordance with law.

11. Considering that the Appellant is stated to be residing in Kerala, he shall appear before the Disciplinary Authority alongwith a copy of the present order within a maximum period of six weeks from today. In the event of his failure to do so, the Disciplinary Authority shall stand discharged of all obligations under this order and the appeal shall be deemed to have been dismissed.

12. If the Appellant appears before the Disciplinary Authority within the time fixed, the Disciplinary Authority is required to consider the matter in accordance with law and dispose it by a reasoned and speaking order within a maximum period of four weeks thereafter, provided the Appellant himself cooperates. It does not preclude the Disciplinary Authority from proceeding *ex parte* also, if necessary in the event of lack of adequate cooperation by the Appellant. But in that event, the Disciplinary Authority is required to record reasons for the same so that ultimately the matter is finally disposed within the time fixed.

13. The writ appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE