

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 23386 of 2022

BETWEEN:-

**MEHFOOJ KHAN S/O SHRI MEHBOOB KHAN, AGED ABOUT 37 YEARS,
OCCUPATION: UNEMPLOYED, R/O 9D OMKAR MARG, GANDHI NAGAR,
INDORE (MADHYA PRADESH)**

.....PETITIONER

(SHRI RISHI TIWARI, LEARNED COUNSEL FOR THE PETITIONER.)

AND

**THE STATE OF MADHYA PRADESH, THROUGH PRINCIPAL
1. SECRETARY, URBAN ADMINISTRATION AND HOUSING
DEPARTMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

**INDORE MUNICIPAL CORPORATION THROUGH THE
2. COMMISSIONER, INDORE MUNICIPAL CORPORATION (MADHYA
PRADESH)**

**3. THE COMMISSIONER, INDORE MUNICIPAL CORPORATION, INDORE
(MADHYA PRADESH)**

**4. THE DIVISIONAL COMMISSIONER, COMMISSIONER OFFICE,
INDORE (MADHYA PRADESH)**

**5. DEPUTY COMMISSIONER (ESTABLISHMENT) INDORE MUNICIPAL
CORPORATION, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANIKET NAIK, LEARNED COUNSEL FOR THE RESPONDENTS)

Reserved on : *19.10.2023.*

Pronounced on : *27.10.2023.*

*This petition coming on for orders this day, the court passed the
following:*

ORDER

The petitioner has filed the present petition being aggrieved by an order dated 22.06.2022 passed by the Commissioner, Indore Municipal Corporation whereby he has been terminated from service and vide order dated 27.09.2022 appeal has been dismissed.

The facts of the case in short are as under:

02. Vide order dated 06.08.2005, this petitioner was given a compassionate appointment on the post of Beldar. Vide order dated 30.11.2017 he was assigned the work of maintenance of the records of Waste Collection from door to door in the Bulk Waste Collection Department.

03. On 08.08.2018 the Special Police Establishment (Lokayukt) conducted a raid in the house of Mohammed Aslam Khan Beldar of Indore Municipal Corporation in which possession of the properties disproportionate to his known source of income was found. The Investigation Officer of the Special Police Establishment vide letter dated 23.08.2018 demanded certain information from the service record of Mohammed Aslam Khan which was furnished vide note-sheet dated 23.08.2018 by the then In-charge clerk of the Establishment section of IMC as at that time petitioner was posted in the Bulk Waste Collection Department.

04. Vide order dated 05.02.2019 the petitioner was sent to the Accounts Department as In-charge Clerk thereafter on 02.07.2019 he was sent to the Establishment Section. Vide order dated 08.07.2019 the

petitioner was assigned additional duties to maintain the records of the Lokayukt / Economic Offences and immovable properties. Vide order dated 09.03.2022 the petitioner was placed under suspension by respondent No.3 on the allegation that he did not prepare the charge sheet and imputation of misconduct and did not forward the relevant orders of the State Government dated 17.10.2018 pertaining to the proposed action to be taken against Mohammed Aslam Khan due to which proper enquiry could not be conducted against him. Thereafter, respondent No.3 decided to initiate the departmental enquiry by issuing the charge-sheet and statement of imputation of misconduct on 8 charges to the petitioner. The charges are as under:-

1. अपचारी कर्मचारी मो. असलम खान, बेलदार के विरुद्ध लोकाय कार्यवाही के पश्चात जारी निलंबन आदेश दिनांक 08/08/2018 के प नियमानुसार अपचारी कर्मचारी के विरुद्ध आरोप, आधार पत्र तैयार करने एवं विभागीय जाँच संस्थित नहीं करने का आरोप।
2. श्री असलम खान के विरुद्ध लोकायुक्त में प्रचलित अपराध क 179/2018 में कार्यालयीन आदेश क्रमांक 604 / एमसी / 18 08/08/2018 के माध्यम से निलंबित किये जाने के दिनांक से आज दिन तक नस्ती आयुक्त की ओर प्रस्तुत नहीं किये जाने का आरोप।
3. उक्त कृत्य पदीय दायित्वों से भिन्न होकर अपचारी कर्मचारी को अनुति लाभ दिलाने की संलिप्तता का आरोप।
4. आपके उल्लेखित कृत्य से निगम की कार्य प्रणाली पर प्रश्नचिन्ह एवं निगम की छवि भी धूमिल करने का आरोप।
5. इतने गंभीर एवं महत्वपूर्ण प्रकरण को लंबित रखते हुए समयबद्ध कार्यका नहीं करने का आरोप।
6. मोहम्मद असलम के संबंध में लोकायुक्त कार्यालय एवं उप संचालक विभाग, वित्त मंत्रालय, भारत सरकार को पत्र दिनांक 11/08/2021 के माध्यम से प्रेषित भ्रामक जानकारी में संलिप्तता का आरोप।
7. आपके द्वारा मो. असलम पिता मो. अफजल खान, बर्खास्त बेलदार, प्र. क्लर्क, झोन क्रं. 13, नगर पालिक निगम, इन्दौर को बर्खास्त किये जाने संबंधी

आदेश क्रं.217 दिनांक 05/07/21 का रिकार्ड नस्ती पर संधारित नहीं किये जाने का आरोप .

8. मो. असलम पिता मो. अफजल खान, बर्खास्त बेलदार, प्र. क्लर्क, झोन क्रं. 13, नगर पालिक निगम, इन्दौर द्वारा आयुक्त, इन्दौर संभाग, इन्दौर के समक्ष प्रस्तुत अपीलीय प्रकरण में संभागायुक्त कार्यालय के पत्र क्रं.1066 दिनांक 24/08/2021 के माध्यम से चाही गई जानकारी से संबंधित पत्र रेकार्ड/ नस्ती पर नहीं लिये जाने का आरोप।

9. मो. असलम पिता मो. अफजल खान, बर्खास्त बेलदार, प्र. क्लर्क, झोन क्रं.13, नगर पालिक निगम, इन्दौर द्वारा आयुक्त, इन्दौर संभाग, इन्दौर के समक्ष प्रस्तुत अपीलीय प्रकरण में संभागायुक्त कार्यालय के पत्र क्रं. 1066 दिनांक 24/08/2021 के माध्यम से चाही गई जानकारी बिना अधोहस्ताक्षरी के संज्ञान में लाये प्रथम अपीलीय अधिकारी एवं संभागायुक्त, इन्दौर को जवाब प्रेषित किये जाने का आरोप।

05. The petitioner submitted a representation dated 14.03.2022 clarifying that at the relevant point of time, he was not posted in the concerned establishment section thereafter he cannot be held responsible for the lapses committed by the superintendent and in-charge of the then clerk. Thereafter the petitioner submitted a detailed reply on 21.03.2022. The presenting officer examined 4 witnesses to establish the charges against the petitioner. The enquiry officer submitted an enquiry report in which charges No.1 to 7 were found to be proved and charges No.8 and 9 were not found proved. A copy of the enquiry report was supplied to the petitioner and he submitted a detailed representation on 05.05.2022. Thereafter, another show-cause notice was issued to the petitioner on 12.05.2022 as to why the major penalty prescribed under Rule 10 of The M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 be imposed upon him.

06. The petitioner thereafter submitted various representations for the supply of necessary documents but no heed was given and finally

vide impugned order dated 22.06.2022, the petitioner was terminated from service by respondent No.3. The petitioner preferred an appeal on 15.07.2022 and the same was dismissed vide order dated 27.09.2022 hence, this petition before this Court.

07. After notice, the respondent Indore Municipal Corporation filed the reply in support of the impugned orders by submitting that the contents of paragraphs No.5.1 to 5.13 of the memo of the Writ Petition are a matter of record. The IMC has not fairly admitted that the petitioner was posted in the EOW and Lokayukt Establishment only on 02.07.1999 but tried to explain that since his posting in the concerned establishment section, he was required to undertake the work assigned to him so he committed a continued misconduct. The respondent reiterated that the petitioner was required to prepare the charge-sheet, imputation of charge and place them before the competent authority of IMC. This means according to the answering respondent it was the petitioner's duty to prepare a charge-sheet for Mohammed Aslam Khan and place it before the Disciplinary Authority that too after the conclusion of the Departmental Enquiry against him.

08. According to the respondents, the preparation of charge-sheet and imputation of charge is a clerical work to be discharged by the petitioner whose substantive post is Beldar. This Court is shocked and surprised that in Municipal Corporation, Indore the work of preparation of charge and imputation of charges are being handled by Beldar or charge clerk. The charges are liable to be framed/drafted by the Disciplinary Authority on the basis of the material. The duties of the

clerk are only to maintain the file, and record documents for the concerned officer. According to the respondent, the Enquiry Officer has duly considered the material available on record and rightly found the charges No.1 to 7 proved against this petitioner and thereafter disciplinary authorities duly approved the punishment of termination from service. During the argument, Shri Aniket Nayak referred the page no 4 of the note sheet of Nasti No.100/2018 signed on 30.06.2020 whereby the complete information was not sent by him to the DSP, Special Police Establishment, Lokayukt Indore. This note-sheet is written and signed by the Superintendent and endorsed by the Deputy Commissioner. By that time delinquent Mohammed Aslam Khan had already been taken back into the service by reducing the punishment of termination.

09. Shri Rishi Tiwari, learned counsel for the petitioner argued that the Superintendent has retired from service and a departmental enquiry has not been completed till date against him and the Deputy Commissioner has been taken back into the service, therefore, the petitioner who was not at all responsible for writing and signing the note-sheet is out from service as a scapegoat. Before the note-sheet, page No.2 and 3 were signed by the same Superintendent whereby information regarding the suspension of Mohammed Aslam Khan and pendency of departmental enquiry had already been sent to the Lokayukt office Indore. At that time, the petitioner was not posted in the said Branch.

10. Shri Nayak tried hard to justify the impugned action of the respondents by submitting that because the petitioner did not act promptly and efficiently, the Indore Municipal Corporation suffered damage to its reputation. During the argument, Shri Nayak disclosed that Mohammed Aslam Khan was terminated from service because of the Lokayukt raid which he challenged by way of appeal, in which the order of termination has been modified by a minor penalty and he has been taken back into the service. This matter was widely reported by the media that an employee who was raided by the Lokayukt has been taken back into the services by imposing a lesser punishment. Thereafter, this matter was scrutinized and it was found that the charge-sheet served to Mohammed Aslam Khan was not properly drafted information of charges in respect of the raid was not taken into consideration and whosoever was found responsible in that case was subjected to the departmental enquiry including petitioner. It is clear that the Municipal Corporation came into action only when the matter was reported in the newspaper and social media and in order to save the image it has been decided to sacrifice the services of 2-3 employees to clean the image in public and media. The petitioner being a low-paid employee has been targeted to build its clean image in public. The three officers were selected for punishment in the matter of Mohammed Aslam Khan i.e. Deputy Commissioner, Superintendent and this petitioner. The Departmental Enquiry against the Deputy Commissioner has not been started yet, the Superintendent has retired from service, therefore, there is slow progress in his enquiry. Only against this petitioner enquiry has been completed within four months to terminate him from the services.

11. So far as the charges against the petitioner and how they have been found proved by the Enquiry Officer are also very interesting in this matter. Charge No.1 against the petitioner is that after the action taken by Lokayukt, Mohammed Aslam Khan was suspended on 08.08.2018 and thereafter this petitioner did not prepare the charge-sheet, imputation of charges and to initiate the enquiry. As held above this petitioner came into this establishment section only on 02.07.2019 i.e. after almost one year when Mohammed Aslam Khan was suspended. The respondents have suppressed the date of termination of Mohd. Aslam Khan and date of his reinstatement into the services of IMC It is surprising that on what basis the Enquiry Officer has recorded the finding that after suspension on 08.08.2018, this petitioner did not submit a note-sheet for initiation of departmental enquiry when he was not posted in that section at that relevant point of time. Even otherwise the petitioner being in charge clerk was not competent to draft the charge against Aslam Khan. It was the duty of either the superintendent or Dy. Commissioner. The conclusive findings are reproduced below:

उपरोक्त अपचारी कर्मचारी एवं गवाहों के कथनों से मैं जाँच अधिकारी इस निष्कर्ष पर पहुंचती हूँ कि, मो. असलम खान, बेलदार के विरुद्ध लोकायुक्त संगठन में प्रचलित अपराध क्रं.179/18 से संबंधित निगम में प्रचलित मूल नस्ती का अवलोकन करने पर पाया गया कि, मो. असलम खान, बेलदार के विरुद्ध लोकायुक्त कार्यवाही के पश्चात जारी निलंबन आदेश क्रं.604/एमसी/18 दिनांक 8/8/18 के पश्चात अपचारी कर्मचारी द्वारा मो. असलम खान, बेलदार के विरुद्ध आरोप, आधार पत्र तैयार कर विभागीय जाँच हेतु नस्ती प्रस्तुत नहीं की गई एवं प्रकरण में विभागीय जाँच एवं अन्य कोई कार्यवाही प्रारंभ ही

नहीं की गई। अपचारी कर्मचारी द्वारा उल्लेख किया गया है कि, लोकायुक्त संगठन के अपराध क्रमांक 179/18 में असलम खान बेलदार के घर लोकायुक्त का छापा पड़ा था और प्रकरण में लोकायुक्त द्वारा अपने स्तर पर साक्ष्य और सबूतों के आधार पर जांच की जाती है। किन्तु अपचारी कर्मचारी द्वारा ऐसा कोई प्रमाण प्रस्तुत नहीं किया गया, जिससे यह प्रमाणित हो कि लोकायुक्त प्रकरण में विभागीय जाँच नहीं की जा सकती। जबकि अपचारी कर्मचारी का दायित्व था नस्ती प्रारंभ करना एवं नस्ती को विभागीय जाँच संस्थित करने हेतु वरिष्ठ अधिकारियों को प्रस्तुत करना। जिसके पश्चात वरिष्ठ स्तर पर आगामी कार्यवाही निर्धारित कर निर्देशित किया जाता कि प्रकरण उच्च स्तर पर लंबित होने से प्रकरण में विभागीय जाँच संस्थित की जाना है अथवा नहीं। उपरोक्त स्थिति के प्रकाश में आरोपित आरोप प्रमाणित होना पाया जाता है।

12. The charge No.2 is that from 08.08.2018 i.e. date of suspension to till today the note-sheet has not been produced before the Commissioner. Again the deposition of four witnesses has been reproduced and a conclusion has been drawn that the petitioner did not submit a note-sheet to the Commissioner. The Enquiry Officer, Disciplinary Officer and Appellate Authority all have failed to appreciate that the in charge clerk is not supposed to write a note-sheet or take a decision for initiation of any enquiry, it is for the Superintendent or Disciplinary Authority to instruct him or dictate him the contents of note-sheet. He was only responsible for maintaining the record properly but he could not go beyond to decide in respect of the initiation of enquiry and that too when he was not posted in the said section.

13. Charge No.3 is also related to charges No.1 & 2 that he extended undue benefit to the delinquent employee. Again the statement of the same 4 witnesses has been reproduced and drawn the conclusion. Charge No.4 is in respect of damage to the image of the Corporation in the public and this Court has failed to understand how that charge is found to have proved by repeating the statement of all four witnesses. Likewise, charges No.5, 6 and 7 have been again proved by reproducing the same deposition of four witnesses. Charge No.7 is that he did not keep the order of termination of Mohammed Aslam Khan dated 05.07.2021 in the note-sheet. According to the Enquiry Officer, Mohammed Aslam Khan was terminated in an enquiry initiated after suspension on 17.04.2018 which is altogether a different matter. The entire service book of Mohammed Aslam Khan was sent to the Lokayukt Department. As per page No.1 (Annexures 5 and 6) of the note-sheet the information in respect of Mohammed Aslam Khan Beldar was limited information from the date of appointment till the date of raid i.e. 06.08.2018 was sought by the Lokayukt Establishment which was written in the note-sheet by Superintendent dated 23.08.2018 and at that time the petitioner was not there.

14. The petitioner was first time posted and was given the charge of establishment of the Branch of Head Office only on 08.07.2019 Annexure P/9 as in charge clerk which has not been denied by the respondents. Despite the specific reply given by the petitioner, the disciplinary authority did not consider this important date i.e. 08.07.2019 by that time matter of Aslam Khan had already been completed.

15. In the hierarchy of the IMC, the Commissioner is I competent authority to take decisions for disciplinary action against the sub-ordinate officers/employees. The office of Municipal Corporation Indore is in one building and within one campus, every officer knows what is happening with the employee. The raid of the Lokayukt in the house of Mohammed Aslam Khan was known to everyone, this matter was widely published in the newspaper. It cannot be believed that due to non ubmision of the note-sheet, the higher authority had no knowledge about the matter of Aslam Khan. The decision to draft and frame the charges power is always with the Disciplinary Authority or authority delegated by him and by no stretch of the imagination, a Clerk can be held responsible for non-drafting a proper charge sheet and non-submission the note-sheet so that the proper charges could not be framed. The Enquiry Officer, Disciplinary Authority and Appellate Authority had made up their mind to terminate the services of the petitioner and the entire Departmental Enquiry was an empty formality hence it can safely be held that the petitioner has been illegally removed from the services of Indore Municipal Corporation.

16. If the matter of Mohammed Aslam Khan was so serious, the then Commissioner ought to have directed the subordinate officer to call the file and prepare a note-sheet. The Corporation itself took the decision to reinstate Mohammed Aslam Khan into the service and he is in service this petitioner has been blamed for it to save the image in public, therefore, the entire action of removal of this petitioner is illegal, a misuse of power, arbitrary and liable to be condemned with strong words.

17. In view of the above, the impugned order dated 22.06.2022 passed by the Commissioner, and the order dated 27.09.2022 passed by the Appellate Authority of Indore Municipal Corporation are set aside. The petitioner be reinstated into the service with full back-wages and all consequential benefits.

18. For illegal action, the respondents / Indore Municipal Corporation is settled with the cost of Rs.1,00,000/- payable to the petitioner.

**(VIVEK RUSIA)
JUDGE**

Divyansh