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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 21st January, 2019**

% **W.P.(C) 573/2019**

MAHATMA MAHTO Petitioner

Through: Ms. Sakshi Kakkar with
Mr. Shakti Singh, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL PALIKA KENDRA, NEW
DELHI Respondent

Through: Mr. Harsha Peechara, ASC with
Mr. Aditya Vikram Singh,
Ms. Vidhi Jain, Ms. Kanika Singh &
Ms Sriparna Chatterjee, Adv. for R-1 .

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 2576/2019(exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 573/2019 & C.M. No. 2575/2019(for interim relief)

1. The petitioner has preferred the present writ petition to assail the order dated 3.10.2018 passed by the Central Administrative Tribunal in OA No.3035/2018. The Tribunal has disposed of the said original application preferred by the petitioner with the following directions:-

i) *The applicant is directed to file an application, with a copy to the respondent, to the District Magistrate, Saran (Chhapra), Bihar for a fresh caste certificate within two weeks.*

ii) *The respondent – NDMC is also directed to write a letter to the District Magistrate, enclosing therewith a copy of the application of the applicant, for issuance of a fresh caste certificate to the applicant. The NDMC shall request to the District Magistrate to send a copy of the fresh caste certificate, with a covering letter to it, directly as well.*

iii) *If the new caste certificate issued by the District Magistrate indicates that the applicant belongs to 'Kharia' caste, which comes under the scheduled tribe of Bihar State, in that case, the DE proceedings initiated against the applicant shall cease to exist and the applicant shall be entitled for all the consequential benefits.*

iv) *The applicant shall be reinstated in service within a period of two weeks from the date of receipt of a copy of this order. His period of suspension, however, shall be dealt with in terms of F.R. 54-B at the appropriate time."*

2. We may observe, at the outset, that the impugned order has been assailed by the respondent/NDMC by preferring WP(C) No.11181/2018 wherein the operation of the impugned order was stayed vide order dated 15.10.2018. We are informed that, consequently, further inquiry was held against the petitioner and he was found guilty of alleged misconduct of forgery, namely, producing false and fabricated ST certificate at the time of seeking employment with the respondent. On this premise, he has been removed from service and his departmental appeal is now pending before the Lieutenant Governor, who is the Appellate Authority.

3. The petitioner was initially charge sheeted in respect of the alleged

false claim made by him that he was Scheduled Tribe candidate – to secure employment as a reserved category candidate with the NDMC/respondent. The charge memo under Rule 14 of the CCS (CCA) Rules, 1965 was issued on 3.6.2014. The Inquiry Officer made his report dated 6.7.2016 concluding that the charge has not been proved. The Inquiry Officer's report was submitted to the Disciplinary Authority. The Disciplinary Authority did not pass any orders – either agreeing, or disagreeing the said report. It appears that the Disciplinary Authority, of his own, sought to make inquiry with regard to the genuineness of the caste certificate produced by the petitioner at the time of his appointment in the NDMC/respondent from the District Authority of Saran (Chhapra), Bihar. The District Welfare Officer, Saran (Chhapra), Bihar vide a letter dated 6.5.2015 informed the respondent/NDMC that the caste certificate dated 12th July, 1985 furnished by the petitioner was fake (in the impugned order the date of the caste certificate mentioned in para 2.4 is wrongly typed as 19.06.2013). On the basis of the said communication dated 6.5.2015, the Disciplinary Authority took legal opinion and finally decided vide communication dated 22.3.2018, to require the Inquiry Officer to conduct further inquiry. The said communication, which has not been filed by the petitioner but has been shown in the Court by learned counsel for the NDMC/respondent (and which also forms part of the record of WP(C) No.11181/2018), reads as follows:-

“2. Accordingly, you have submitted the Inquiry report dated 06.07.16 concluding that the prosecution could not substantiate the charge framed against the C.O. On examination of your report dated 06.07.2016, it has been observed that (i) Opinion of Smt. Jyoti Singh, Sr. Advocate vide letter dated 16.11.2013

(Anexure-III poin tnO.9) and (ii) Letter dated 06.05.2015 of District Kalyan Padaadhikari, Saran (Chhapra) [have not been considered in the Inquiry Report dated 06.07.2016 sent to you vide Vigilance Department's letter dated 08.07.15]"

Para 2

4. This communication was also addressed to the petitioner. The erstwhile Inquiry Officer, however, expressed his inability to proceed in the matter and consequently another Inquiry Officer was appointed vide order dated 20th July, 2018.

5. The petitioner was aggrieved by the re-opening of the inquiry and consequently preferred the aforesaid original application. The Tribunal has taken the aforesaid view on the premise that the caste of the petitioner i.e. "Kharia" is, in any event, a Scheduled Tribe. As noticed above, the NDMC is aggrieved by the aforesaid direction, and submits that submission of a false caste certificate is a reason good enough to take disciplinary action against the petitioner, irrespective of the fact whether he belongs to the "Kharia" caste which is a notified Scheduled Tribe.

6. The submission of the learned counsel for the petitioner is that the Disciplinary Authority did not express its disagreement with the report of the first Inquiry Officer. That being the position, it was not open to him to initiate a fresh inquiry against the writ petitioner.

7. Having heard the learned counsel for the parties and perused the record, we find no merit in the submissions of the petitioner. Pertinently, no order was passed by the Disciplinary Authority accepting the report prepared by the Inquiry Officer on 6.7.2016. The inquiry was never closed. The Disciplinary Authority is entitled to conduct an inquiry himself. Else, he may appoint an Inquiry Officer. The Inquiry Officer only acts as the

delegate/agent of the Disciplinary Authority while conducting the inquiry, which is a fact finding inquiry. The Inquiry Report, in any event, is not binding upon the Disciplinary Authority. He can even disagree with the same for reasons to be furnished by him. In the present case, the Disciplinary Authority, evidently, was not convinced with the findings of fact reported by the Inquiry Officer in his report and, for that reason, sought to make inquiry with regard to the caste certificate furnished by the petitioner by addressing communication to the District Magistrate *Saran (Chhapra), Bihar*. He got a response that the caste certificate relied upon by the petitioner was fake. This development certainly called for further inquiry and, that is why, the Disciplinary Authority ordered vide communication dated 22nd March, 2018 the Inquiry Officer to make further enquiry.

8. The submission of the petitioner that the Disciplinary Authority had accepted the report of the Inquiry Officer is premised on the file noting made by the Director (Vigilance) on 2.6.2017, wherein the said officer observed that benefit of doubt may be accorded to the petitioner and the Inquiry Report may be accepted by the Disciplinary Authority as departmental inquiry could not arrive at a final conclusion in the issue. He further observed that “*further NDMC would be free to take a decision and seize the report from police if same is found against the stand of IO*”. There is no file noting shown to the Court recording the acceptance of the Inquiry Report prepared by the Inquiry Officer by the Disciplinary Authority. Much less, is their communication addressed to the petitioner to this effect. It is well settled legal principle that file notings, one way or another, do not

constitute the decision. They are part of the process of discussion, and it is not open to any party to pick out any file noting and to stake a claim on that basis. In any event, the same file noting also states that on material being found against the petitioner, NDMC would be free to take action. Even before the said recommendation could be accepted by the Disciplinary Authority, the report from the District Authority in *Saran (Chhapra), Bihar* surfaced against the petitioner. Thus, in any event, the reopening of the enquiry could not have been assailed.

9. The next submission of learned counsel for the petitioner is that the Disciplinary Authority was required to record its reasons if he disagreed with the Inquiry Report, or decided to initiate a further inquiry.

10. In this regard reference is made to ***Mathura Prasad vs. Union of India, (2007) 1 SCC 437*** wherein the Supreme Court observed as under:-

“17. The enquiry officer in his first report might not have specifically recorded his findings with reference to each of the charges levelled against the appellant but he arrived at a finding on analysis of the materials on record. If he was to differ with the said findings on the basis of any fresh materials, he was enjoined with a duty to grant another opportunity of hearing to the appellant.

*18. Even if the enquiry officer had, in his first report, proceeded on surmises and conjectures as was observed by the High Court, the disciplinary authority could disagree with the said finding but it was, therefor, required to record its reasons. No reason was recorded. Sub-rules (2) and (3) of Rule 10 aim at achieving the same purpose. **If sufficient materials are not available on record, a direction for holding a further enquiry may be issued in terms of sub-rule (2) of Rule 10 so as to enable the department to lead further evidence before him. For the said purpose also, reasons are required to be recorded by the disciplinary authority.** An opportunity of hearing to the delinquent officer is required to be given. However, in the*

event, the disciplinary authority comes to the conclusion that the conclusion arrived at by the enquiry officer on the basis of materials placed by the parties are incorrect, he may disagree with the said findings but even therefor, he is required to record reasons in support thereof. The requirement of sub-rule (2) or sub-rule (3) having not been complied with, the enquiry officer could not have arrived at a different finding. The High Court unfortunately did not consider this aspect of the matter.”
(emphasis supplied)

11. As noticed above, in the present case, there is no disagreement expressed by the Disciplinary Authority with the first Inquiry Report. He has observed in the communication dated 22.03.2018 that the Inquiry Report prepared by the Inquiry Officer dated 6.7.2016 was found to be incomplete. The order dated 22nd March, 2018 contains sufficient reasons for ordering further inquiry in the matter and, therefore, there is sufficient compliance of law as laid down by the Supreme Court in ***Mathura Prasad (Supra)***. For all the aforesaid reasons, we are of the view that the present petition has no merit and the same is dismissed.

12. We may observe that we have not gone into the submissions made by the NDMC/respondent with regard to its grievances as raised in WP (C) 11181/2018 and the same shall be dealt with by the Court while hearing that petition.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 21, 2019
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