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

% *Date of Decision: 23.07.2021*

+ **W.P.(C) 6907/2021 & CM No.21816-17/2021**

LALIT KUMAR GUPTA Petitioner

Through: Mr. Shashank Mangal, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. R.V. Sinha with Mr. Amit Sinha,
Advs. for NDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER J. (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

CM No.21818/2021

1. Allowed, subject to just exceptions.

CM No.21817/2021

2. The prayer made in the captioned application is to grant exemption from filing notarized affidavits.

2.1 The captioned application is disposed with the direction to the applicant/petitioner to file duly notarized affidavits, within three days of this Court resuming its normal and usual work pattern.

W.P.(C) 6907/2021 & CM No.21816/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned order and disciplinary proceedings]

3. Issue notice. Mr. R.V. Sinha accepts notice on behalf of the respondent i.e., North Delhi Municipal Corporation (NDMC).

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3.1. Mr. Sinha says that, in view of the order that we intend to pass, he does not wish to file a reply, and will argue the matter based on the record available with the Court.

4. Thus, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4.1. This writ petition is directed against the order dated 12.07.2021, passed by the Central Administrative Tribunal (in short 'the Tribunal') in O.A. No.96/2021.

5. For the purposes of adjudicating upon the writ petition, the following broad facts are required to be noticed.

5.1. The petitioner is employed as an Upper Division Clerk (UDC) in the NDMC.

5.2. It appears that an FIR was registered against the petitioner, on 03.09.2012. The allegation made against the petitioner was, that he had committed offences under Section 7/13 of the Prevention of Corruption Act, 1988.

5.3. Because of the FIR being registered, the petitioner was suspended from service. However, on 10.03.2014, the order concerning suspension was withdrawn, and the petitioner was reinstated.

5.4. Insofar as the criminal proceeding was concerned, it culminated in the petitioner's acquittal. A judgment, to that effect, was delivered by the concerned trial court on 15.12.2018.

5.5. It is, thereafter, i.e., on 28.10.2020, that a charge memo was served on the petitioner by the disciplinary authority. The allegation levelled against the petitioner was that, in 2012, he had received illegal gratification of Rs.50,000/- from one Mr. Mirja Tahir, for abjuring from sealing his shop.

6. Mr. Shashank Mangal, who appears for the petitioner, says that, the Tribunal has failed to notice that the disciplinary proceedings were initiated against the petitioner, after a delay, of almost eight and half years.

6.1. Furthermore, Mr. Shashank says that, the disciplinary authority, while issuing the charge memo failed to apply its mind to the fact that the allegation levelled therein, against the petitioner, was no different from what was stated in the aforementioned FIR. It is Mr. Shashank's submission that, the disciplinary authority, before initiating the disciplinary proceedings, should have examined as to what had emerged, which was not captured in the criminal proceedings, launched against the petitioner.

6.2. Mr. Shashank says that, the tribunal also failed to notice the provisions of Section 20(4) of the Rights of Persons with Disabilities Act, 2016 (in short 'RPWD Act').

7. On the other hand, Mr. Sinha says that there is no bar in disciplinary proceedings being initiated against an employee even if he is acquitted in the criminal proceedings.

7.1. Mr. Sinha also contends that, the delay, in commencing the disciplinary proceedings, by itself, cannot be the reason for quashing the same.

7.2. Insofar as the provisions of Section 20(4) of the RPWD Act are concerned, Mr. Sinha says that the said provision does not bar initiation of disciplinary proceedings against the petitioner.

8. We have heard the learned counsel for the parties and perused the documents including the impugned order.

8.1. A perusal of the pleadings would show that, the petitioner had raised a specific averment before the Tribunal that, there was a substantial delay in the initiation of disciplinary proceedings.

8.2. The reply filed by the NDMC did not explain the reasons for the delay. The assertion made by the NDMC was, that there is no bar in initiating disciplinary proceedings merely because the petitioner had been acquitted in criminal proceedings. These assertions were made, based on the ratio laid down in several judgments, which were cited in the reply filed before the Tribunal.

8.3. The Tribunal, however, in the impugned order, did not deal with the aspect of delay, which had been raised by the petitioner. This, according to us, was a matter which should have attracted the attention of the Tribunal.

8.4. The petitioner claims that, he is suffering from locomotor disability, with a disability factor of 95%.

8.5. The Tribunal, in our view, should have taken into account, the entirety of facts and circumstances, obtaining in the matter, including the submission of the petitioner, that there was delay in the initiation of disciplinary proceedings, before concluding, as to whether or not, NDMC should continue with the same.

8.6. The explanation given by NDMC *qua* delay in initiating the disciplinary proceedings, in its reply, to say the least, is bereft of material particulars, as to, why NDMC waited till October 2020 to serve a charge memo on the petitioner.

8.7. We must, however, indicate that, it is not our view that disciplinary proceedings cannot be commenced, if an employee has been acquitted in the criminal proceedings. The standard of proof in criminal proceedings is far higher than that which obtains in the disciplinary proceedings. In the former, it is beyond reasonable doubt, whereas, in the latter it is preponderance of probability.

8.8. That being said, the delay in initiating criminal proceedings, according to us, needs to be explained by the employer. In this case, the NDMC has failed to furnish an explanation for the delay in initiating the disciplinary proceedings.

9. Insofar as the submission made by Mr. Shashank, with regard to Section 20(4) of the RPWD Act is concerned, we are not impressed. The said provision cannot be read, in a fashion, in which, it has been put forth by Mr. Shashank.

9.1. Section 20 of the RPWD Act merely provides that, no person with disability will be discriminated in any matter relating to employment. Subsection 4 of Section 20 of the said Act simply states that, no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.

9.2. The aforesaid provision does not bar initiation of disciplinary proceedings against a person with disability, if a case is made out for triggering such proceedings. Therefore, Mr. Shashank's submission, as regards Section 20(4) of the RPWD Act, as indicated above, is untenable, and is, accordingly, rejected.

10. Thus, for the foregoing reasons, we are inclined to set aside the impugned order, passed by the Tribunal, and remand the matter for a *de novo* hearing. It is ordered accordingly.

10.1. The Tribunal will permit the petitioner, *inter alia*, to raise the issue, concerning delay in the initiation of disciplinary proceedings.

10.2. The Tribunal will also allow the parties to file additional affidavits, if deemed necessary, in its wisdom.

11. Given the fact that the petitioner is suffering from a severe disability, parties and their counsel are directed to appear before the Tribunal, for directions, on 09.08.2021.

12. The writ petition is disposed of in the aforesaid terms. Consequently, pending application shall stand closed. The case papers shall be consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JULY 23, 2021/rb

Click here to check corrigendum, if any

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