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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 07.07.2025***

+ W.P.(C) 9163/2025

NEW DELHI MUNICIPAL COUNCIL

.....Petitioner

Through: Mr. Vaibhav Agnihotri, ASC
NDMC with Ms. Suruchi
Khandelwal, Adv.

versus

SUNIL KUMAR & ANR.

.....Respondents

Through: Mr. Surinder Kumar Bhasin,
Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (Oral)****CM APPL. 38898/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

W.P.(C) 9163/2025 & CM APPL. 38897/2025 (Stay)

2. This petition has been filed by the petitioner, challenging the Order dated 22.11.2024 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi (hereinafter referred to as 'learned Tribunal') in Original Application (O.A.) 1511 of 2021 titled ***Sunil Kumar v. New Delhi Municipal Council***, allowing the said O.A. filed by the respondent herein with the following direction:

"For the reasons recorded hereinabove, the inquiry report dated 20.12.2018, the order of the Disciplinary Authority dated 24.06.2019 and the order of the Appellate Authority dated 04.08.2020 are quashed and set aside. The applicant would be reinstated in service from the date of his dismissal. However, he would



not be entitled to back wages for the reason of his callous attitude for not participating in the departmental proceedings. The applicant shall be entitled to notional benefits from the date of dismissal till the date of joining and actual benefits from the date of Joining.”

3. To give a brief background of the facts in which the present petition arises, the respondent No.1 was working as a Safai Karmchari with the petitioner. During the course of his engagement, on 17.05.2012, the petitioner received a complaint from the wife of the respondent No.1 alleging that the respondent No.1 was residing with another woman. Respondent No.1 in response, informed the petitioner that there were litigations on-going between himself and his wife.

4. The petitioner claims that in a statement dated 31.10.2016, the respondent No.1 admitted that he is not divorced and still, has remarried.

5. In light of the said admission, the petitioner claims to have issued the Charge Memo dated 08.09.2017 to the respondent No.1 on the following charges:

“ (i) He is not maintaining his legally wedded wife and children from his legally wedded wife Smt. Puspa.

(ii) He is indulged in polygamy and married to Smt. Shamo on 10.06.2005 at Arya Samaj Mandir, Paharganju without divorcing his first wife Puspa.”

6. An Inquiry Officer was appointed to inquire into the charges.

7. The petitioner claims that in spite of due notices, the respondent No.1 stopped participating in the proceedings and was proceeded *ex-parte*. The respondent No.1 also did not lead any evidence, including



producing his wife to refute the allegations made against him.

8. Faced with the above, the Investigating Officer submitted his report on 20.12.2018, finding the charges to be proved against the respondent No.1.

9. Another opportunity was granted to the respondent No.1 to file a representation against the finding of the Inquiry Officer, however, the respondent No.1 failed to do so.

10. Faced with the above, *vide* order dated 24.06.2019, the respondent No.1 was imposed with the penalty of dismissal from services.

11. The respondent No.1 preferred an appeal against the said Order, which was dismissed by the appellate authority *vide* order dated 04.08.2020.

12. Aggrieved thereof, the respondent No.1 filed the above OA, which has been, as noted hereinabove, partially allowed by the learned Tribunal, directing reinstatement of the respondent No.1, however, without back wages.

13. The petitioner challenges the Impugned Order by contending that the respondent No.1 had, in fact, admitted to the fact that he has remarried without obtaining a divorce from the first legally wedded wife. The learned counsel for the petitioner submits that, therefore, the charges against the respondent No.1 stood proved on his own admission.

14. He further submits that in the inquiry proceedings, the respondent No.1, in spite of opportunity granted, failed to appear or lead any evidence. He even took time to produce his legally wedded



wife as a witness, which he later failed to do. Faced with the above, the Investigating Officer found the charges to be proved against the respondent No.1, and the disciplinary authority as also the appellate authority acted in accordance with law in passing the orders, awarding the punishment to the respondent No.1 as also dismissing his appeal there against.

15. On the other hand, the learned counsel for the respondent No.1 submits that there was a violation of principles of natural justice in the present case in as much as, the respondent No.1 was not given adequate notice of the inquiry proceedings. He further submits that, though a detailed representation against the order awarding punishment was submitted to the Appellate Authority, the Appellate Authority passed an unreasoned order dated 04.08.2020, dismissing the appeal filed by the respondent No.1.

16. He submits that the learned Tribunal has rightly held that though, the respondent No.1 did not participate in the inquiry proceedings, the petitioner did not lead any evidence to support the charges against the respondent No.1, because of which the inquiry report could not be sustained.

17. We have considered the submissions made by the learned counsels for the parties.

18. In the present case, as far as the plea of the respondent No.1 that he was not given a proper opportunity to defend himself in the inquiry proceedings, the learned Tribunal has ruled against the respondent No.1. The learned Tribunal in its Impugned Order has observed that the respondent No.1 participated irregularly in the inquiry proceedings



and, therefore, it cannot be said to be a case of *ex-parte* proceedings against the respondent No.1.

19. At the same time, the learned Tribunal has also found that the Inquiry Officer has mainly proceeded on the testimony of the official witnesses, who had only proved the official record. The wife, be it the first or the second wife of the respondent No.1, was not examined and the charges were sought to be established merely on a confession, which was disputed by the respondent No.1.

20. We quote from the Impugned Order as under”

*“6. In order to decide this O.A., we may revert back to the charges inflicted upon the applicant. From the charges it transpires that the applicant had a marital discord with his wife, Pushpa. The applicant was charged with adultery and without obtaining divorce from his wife he married another lady Shammo on 10.06.2005. The list of witnesses cited by the respondents as an annexure to the Charge Sheet does not mention either his first or second wife as witness. In fact, the first wife has been cited as a defense witness by the respondents. From the inquiry proceedings it is clear that the applicant has on and off participated in the inquiry proceedings. Therefore, it cannot be said to be a case of *ex-parte* proceedings. To clarify, the applicant has participated on 11.05.2018, 14.06.2018 and sought a rescheduling of the hearing. However, the applicant has not produced his Charge Sheet witness. The Inquiry Officer has mainly proceeded on the testimony of the official witness who has proved the official record. From a reading of the article of charge along with the inquiry report it is clear that the inquiry officer has nowhere concluded the two charges. A plain reading of the two charges, establish that the first charge follows from the second, therefore, it would have to be*



necessarily proved that the applicant was married to a second wife to prove both adultery and bigamy. In the present facts it has not been proved that the applicant was married to the second lady. Therefore, according to us, it is case of no evidence as per the judgment of the Hon'ble High Court of Delhi in Union of India Versus SR Tewari and Anr. Dated 01.02.2012.

10. The ground of ex parte proceedings and admission of the applicant may not come to the rescue of the respondents as we have already examined the report of the IO and come to the conclusion that the applicant had participated in the proceedings on and off and the applicant's conduct was callous. “

21. We find no reason to disagree with the above findings of the learned Tribunal. In the present case, as noted hereinabove, the petitioner has failed to produce any evidence sufficient to hold the charges against the respondent no.1. The respondent no. 1 could not have been held guilty of the charges solely on the basis of an alleged confession, which he had withdrawn.

22. In view of the above, the petition is dismissed. All pending applications also stands disposed of.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 7, 2025/pr/kz/VS

Click here to check corrigendum, if any