

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3035/2018

Order reserved on 4th September 2018

Order pronounced on 3rd October 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Mahatma Mahto
DOB 05.07.1968, age 50 years
s/o late Pardeshi Mahto
r/o 66 Palika Gram, Sarojini Nagar
New Delhi – 110 023

Working as Stenographer (u/s)
New Delhi Municipal Council
Palika Kendra

..Applicant
(Mr. R V Sinha, Mr. Bal Kishan, Mr. Amit Sinha and Mr. Vaibhav
Pratap Singh, Advocates)

Versus

New Delhi Municipal Council
Palika Kendra, New Delhi
(Through The Chairman)

..Respondents
(Mr. V K Garg, Senior Advocate and Ms. Sriparna Chatterjee, Mr. Nirvikar
Verma & Ms. Noopur Dubey, Advocates with him)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“(b) Quash the Order No.01/F.No.70/Vig./Imp/IOV-II(M)/18 dated 20.07.2018 (Annexure-A-Impugned) and further declare the same as non-est and also quash the charge memorandum (Annexure-A-1) and

subsequent proceeding(s) and action(s) based on such impugned order(s) as illegal, arbitrary”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant joined New Delhi Municipal Council (NDMC) – respondent organization as a Stenographer on 22.07.1994 and has been working since then as such. On 03.06.2014 (Annexure A-1) charge memo came to be issued to him under Rule 14 of CCS (CCA) Rules, 1965, which was accompanied with the statement of article of charges, which reads as under:-

“While working as Stenographer in CPH, Moti Bagh, NDMC, New Delhi Shri Mahatma Mehto has failed to maintain absolute devotion to his duties in as much as that:

A complaint dated 27.02.2013 was received in the Vigilance Department that Shri Mahatama Mehto, Stenographer, NDMC has got employment in NDMC reserved for SC/ST candidates only by submitting fake ST Certificate. Similar complaint was received by NDMC from CM office, Public Grievance Redressel Cell, Delhi Secretariat, New Delhi vide No.CM/PGC/37 dated 01.03.2013. The case has been investigated in the Vigilance department. It is revealed that the caste certificate furnished by Shri Mahatma Mehto at time of his appointment in NDMC, was fake/bogus.

Further, an F.I.R. No.128 dated 13.03.2014 u/s 420/467/471 I.P.C. was lodged against Shri Mahatama Mehto by Police Station Connaught Place, New Delhi and the original documents have been provided to the Police Station Connaught Place. The outcome of the investigation is still awaited.

The above act on his part amounts to gross misconduct and gross negligence unbecoming of a Council Servant. He has thus violated the provision of Rule 3 of the CCS, CCA (Conduct) Rules, 1964.”

2.2 Pursuant to the charge memo, the disciplinary enquiry (DE) proceedings were initiated against the applicant. He participated in the DE proceedings. The enquiry officer (EO), vide his Annexure A-3 report dated 06.07.2016, concluded that the charge against the applicant is not proved. The relevant portion from EO's report is extracted below:-

"After thoroughly going through the materials on record, evaluation of oral and documentary evidences adduced by the parties, perusal of the written submissions filed by the prosecution as well as the C.O. and on the basis of the findings arrived by me hereinabove, I come to the conclusion that the prosecution could not substantiate the charge framed against the C.O."

2.3 The disciplinary authority (DA) sent a copy of the EO's report to the applicant with a covering letter dated 22.06.2017 (Annexure R/2) for his comments. The applicant, vide his Annexure R/3 letter dated 27.06.2017, *inter alia*, requested the DA to accept the enquiry report.

2.4 The DA, in the meanwhile, enquired the status of the caste certificate of the applicant at the time of securing appointment by him in NDMC from the District authorities of Saran (Chhapra), Bihar. The District Welfare Officer, Saran (Chhapra), Bihar, vide his Annexure R/1 letter dated 06.05.2015, informed the respondent – NDMC that the caste certificate dated 19.06.2013 furnished by the applicant is a fake one and it has never been issued by his office. The letter, however, also indicated that 'kharia' caste is listed as one of the scheduled tribes in the State of Bihar.

2.5 Further, the respondent also obtained the opinion from Ms. Jyoti Singh, Senior Advocate in the matter, who, vide her letter dated 16.11.2013, advised that in view of the letter of the District Welfare officer, Saran,

Chhapra dated 19.06.2013, the appointment secured by the applicant is to be treated as void and non-*est* in the eyes of law.

2.6 On the basis of the legal opinion furnished by Ms. Jyoti Singh, Senior Advocate and the letter dated 06.05.2015 received from the District Welfare Officer, Saran (Chhapra), Bihar, the DA, vide impugned his order dated 20.07.2018 (p.13), decided to re-enquire the matter and appointed a new EO.

2.7 The DA also placed the applicant under suspension vide Annexure A-5 order dated 01.08.2018.

Aggrieved by the Annexure A-1 order, the applicant has filed the instant O.A. praying for the relief, as indicated in paragraph (1) above.

3. In support of the relief claimed, the applicant has pleaded the following important grounds:-

3.1 The DA had already accepted the enquiry report dated 06.07.2016 and hence, he is restrained from re-starting the enquiry once again.

3.2 The DA became *functuoso officio* on the very moment when it accepted the EO's report dated 06.07.2016 with conscious mind after due examination and scrutiny.

3.3 No disagreement note was issued by the DA against the EO's report in terms of Rule 15 (2) of CCS (CCA) Rules, 1965, and as such, the enquiry report dated 06.07.2016 had attained finality.

3.4 The Hon'ble Apex Court in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & others**, (2003) 2 SCC 111 has ordained that where a statutory authority is required to do something in a particular manner, the same must be done in the same manner.

4. Pursuant to the notice issued, the respondent – NDMC entered appearance and filed its reply, in which broadly it is stated that after the receipt of letter dated 06.05.2015 from the District Welfare Officer, Saran (Chhapra), Bihar, it was imperative on the part of the respondent to re-enquire the matter.

5. On completion of pleadings, the case was taken up for hearing the arguments of both the parties on 04.09.2018. Arguments of Mr. R V Sinha, learned counsel for applicant and Mr. Vinay K. Garg, learned senior counsel with Ms. Sriparna Chatterjee, learned counsel for respondent heard.

6. Mr. R V Sinha, learned counsel for applicant, more or less, reiterated the averments made in the O.A. He also placed reliance on the following judgments of the Hon'ble High Court and Hon'ble Apex Court:

High Court:

- i) **Chander Singh v. Delhi Development Authority & another**, 193 (25) DRJ 582.
- ii) **Prabhu Dayal & others v. Municipal Corporation of Delhi etc.**, ILR (1980) 1 Delhi 528

iii) **Govind Saran Aeron v. Deputy Director of Education & others**, (1982) 3 SLR 321 (FB).

Apex Court:

iv) **K.R. Deb v. The Collector of Central Excise, Shillong**, 1971 (2) SCC 102.

v) **Kanailal Bera v. Union of India & others**, (2007) 11 SCC 517

7. *Per contra*, Mr. Vinay K. Garg, learned senior counsel for respondent stated that the DA, after the receipt of the letter of District Welfare Officer, Saran (Chhapra), Bihar, it was imperative on the part of the respondent to order fresh enquiry.

8. Placing reliance on the judgment of Hon'ble Apex Court **K.R. Deb** (supra), Mr. Garg, learned counsel submitted that in case of DA noticing any discrepancy in the EO's report, it can seek further enquiry in the matter and in this regard, he drew our attention to paragraph 12 of the said judgment, which reads as under:-

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.”

9. We have considered the arguments of learned counsel for the parties and perused the pleadings.

10. Admittedly, when the enquiry was conducted by the earlier EO, namely, Er. A.K. Joshi, Chief Engineer (E-II), the letter dated 06.05.2015 from District Welfare Officer, Saran (Chhapra), Bihar was not on record. Furthermore, the applicant has secured appointment under scheduled tribe category and the caste certificate dated 16.09.2013 furnished by him indicated that he belongs to '*kharia*' caste. Even the letter dated 06.05.2015 of the District Welfare Officer, Saran (Chhapra), Bihar also indicates that '*kharia*' caste comes under the scheduled tribe category of Bihar State.

11. It is not the case of the respondent that the applicant even though does not belong to schedule tribe but has claimed the benefits of scheduled tribe. The only reason for initiating DE proceedings against the applicant is that the applicant has furnished the caste certificate dated 16.09.2013, which purportedly was never issued by the District Welfare Officer.

12. Important to note that the authenticity of a caste certificate issued in the year 1993 is being questioned much belatedly in the year 2018, i.e., after a lapse of almost 25 years. It is also quite likely that the earlier records may not be available, and, therefore, the letter of District Welfare Officer dated 06.05.2015 has to be given a hard look. We would like to further state that the caste of the applicant would not have changed with the passage of time. If he belonged to '*kharia*' caste (scheduled tribe) in the year 1993, his same caste status would continue even now. Hence, this controversy can be put to an end if the applicant is directed to secure a fresh caste certificate from the

District Magistrate, Saran (Chhapra) Bihar, and the same is sent by the District Magistrate directly to the respondent – NDMC with a covering letter.

13. We also notice that the applicant has been suspended unnecessarily without any justification. The controversy involved in this O.A. is with regard to alleged fake caste certificate furnished by him. It is trite law that a government official is suspended only in the event it is suspected that he is likely to temper with the records. However, in the present case, we are of the view that the applicant, in no way, is in a position to interfere with the official records and convert his alleged fake caste certificate to a genuine one. For this reason, he deserves to be reinstated.

14. In the conspectus, we dispose of this O.A. in the following terms:

- 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.

No order as to costs.

(S.N. Terdal)
Member (J)

/sunil/

(K.N. Shrivastava)
Member (A)