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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8414/2016**
VIVEKANAND SHARMA

..... Petitioner

Through Mr G.C. Mishra, Adv.
versus

LT. GOVERNOR THROUGH CHIEF SECRETARY & ORS

..... Respondent

Through Mr Siddhartha Shankar Roy, Adv. for
R-1 to 4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **23.09.2016**

W.P.(C) 8414/2016 & CM 34786/2016 (stay)

1. We have heard learned counsel for the petitioner and are not inclined to interfere with the impugned order dated 03.05.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 370/2015.
2. The petitioner has primarily raised two contentions before us. Firstly, there is a substantial and unexplained delay of 18 years in issuing the charge-sheet for an incident which had occurred in 1995. Secondly, the petitioner has no concern with Article II of the Articles of charge as he stood transferred on 04.06.1996 from the post of Head Clerk, Transport Department to the Department of Education on promotion. The Article II, it is stated, relates to the No Objection Certificate purportedly processed on 05.02.1997.
3. There is undoubtedly a long delay in issuing the charge-sheet. However, the facts, as stated in the reply filed by the respondent before the

Tribunal indicates that one Sher Singh had made a complaint on 16.07.1999, stating that vehicle no. DL – 2CC – 2622 was involved in a fatal accident in which father of Sher Singh had died on 20.05.1995. The driver was arrested and the vehicle was impounded by the police. The said vehicle at that time was stated to be registered in the name of Dharampal Narang. The allegation was that on 01.06.1995, the ownership of the said vehicle was clandestinely transferred in the name of M/s Mehta Enterprises by the Regional Transport Office, Tilak Marg on the basis of tainted documents dated 30.05.1995. Thereupon, the vehicle was released on superdari to one of the partners of M/s Mehta Enterprises. The case was examined by the Deputy Director, Transport, who had made certain indicting and adverse observations in the enquiry report dated 29.11.1999 regarding the processing of the case for transfer of the vehicle in question. The discrepancies noticed as indicated were, the signatures of the registered owner did not tally, the NOC issued by the authority had expired, Form No.35 was not signed by the registered owner, the registration book was not surrendered, and, the proof of address of the purchaser and the insurance of the vehicle was not enclosed. Thus, the clear and categorical findings were that the transfer of ownership was made without following the proper procedure and in violation of the Motor Vehicle Act and the Rules.

4. It appears that there was an attempt to keep under wraps and suppress the complaint and the report. This would normally be at the behest of a person who could be affected and implicated. A show cause notice dated 29.12.2010 was issued to the petitioner but the same was returned undelivered. After a period of almost 20 months, another show cause notice dated 17.08.2012 was issued to the petitioner to which reply dated

09.10.2012 was filed by the petitioner. After considering the factual matrix, the charge-sheet dated 19.12.2014 was issued.

5. The counsel for the petitioner has relied upon the decision in the case of *State of M.P. vs. Bani Singh* (1990) Supp SCC 738, to state that the case is vitiated due to undue delay in initiating or finalising Disciplinary proceedings and is hence, unsustainable in law. The decision in the abovementioned case has been distinguished by the Supreme Court in *State of Punjab and Ors. vs. Chaman Lal Goyal* (1995) 2 SCC 570, wherein the Apex Court has held as under:-

“9.... It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing.”

6. The petitioner has not raised any claim of any prejudice likely to be caused and the charges against the petitioner allege grave misconduct on part of the petitioner while he was on duty as Head Clerk. In view of the aforesaid, the question of delay etc. and whether there has been a requirement to lead evidence etc will obviously be examined in the enquiry.

Similarly, the disciplinary authority or the enquiry authority will also examine the question whether or not the petitioner had any role to play in the second article of charge.

7. With the aforesaid observations, we dismiss the present writ petition. Pending CM also stands disposed of

8. We clarify that this order will not be construed as an order expressing any opinion on the merits of the charges.

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SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 23, 2016/rd