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

+ **W.P.(C) 11549/2016**

VISHNU SHANKAR PRASAD

..... Petitioner

Through Mr. Tarun Gupta, Advocate.

versus

MINISTRY OF ROAD TRANSPORT & HIGHWAYS AND ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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09.12.2016

CM No. 45497/2016

Exemption application is allowed, subject to all just exceptions.

W.P.(C) No. 11549/2016

Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 7th October, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), which disposes of MA No. 3016/2016 by which the petitioner had sought revival and decision on his application filed under Section 340 of the Code of Criminal Procedure, 1973.

2. The petitioner herein had challenged his order of transfer from Delhi to Silchar in OA No. 1223/2015. He had made allegations of *mala fides* against the respondents, who were impleaded. Reply to the Original Application was filed. Thereupon, the petitioner had filed an application under Section 340 Cr.P.C. being MA No. 2717/2015, to which reply was filed setting out explanations and contesting the assertions.

3. OA No. 1223/2015 came to be disposed of vide order dated 8th February, 2016 wherein the petitioner was permitted to make a representation to the Secretary, Ministry of Road Transport and Highways raising all grounds as espoused, preferably within two weeks. Thereupon, the said authority was required to pass a reasoned and speaking order noting all the points raised by the petitioner. The stay granted to the order of transfer, it was directed would remain in operation. The Secretary, Ministry of Road Transport and Highways, it was observed would be magnanimous keeping in view all issues and aspects.

4. The said order also disposed of MA No. 2717/2015. The petitioner thereafter filed an application seeking disposal of the said MA.

5. We have gone through the application MA No. 2717/2015 and the response and reply given by the respondents, who had admitted that there

was typographical errors regarding the dates. They have also explained other aspects as raised. The primary issue and dispute, which had arisen, was whether there was sanctioned post of Chief Engineer in Silchar on which the petitioner and the respondents were taking opposite stands. The stand taken even if wrong, may not by itself constitute perjury. In any case, the *lis* would have required adjudication and decision. There is always an element of discretion, and when the OA itself was disposed of, without adjudication on merits, the Tribunal had disposed of MA No. 2717/2015, without elucidating on merits.

6. At this stage, counsel for the petitioner submits that the impugned order should not be read as an order deciding any controversy for there is no finding on merits. We find that the counsel for the petitioner would be correct for the impugned order dated 7th October, 2016 nor the order dated 8th February, 2016 decide the said issue or any controversy. We clarify that MA No. 2717/2015 was not disposed of on merits at any stage.

7. With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

**DECEMBER 09, 2016
VKR**