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

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Date of Decision: 16.07.2019

% **W.P.(C.) No. 11706/2016**

GOVT OF NCT OF DELHI AND ANR

..... Petitioners

Through: Mr. Satyakam, ASC along with
Mr. Amresh Goyal from Office of DG
(Prison).

versus

V D PUSHKARNA

..... Respondent

Through: Mr. Sushil Bajaj, Mr. Bhavook
Chauhaan & Ms. Aasifa Sheikh,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The Government of NCT of Delhi has preferred the present petition to assail the order dated 31.08.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.4527/2014. The Tribunal allowed the said Original Application preferred by the respondent to assail initiation of departmental proceedings against him. The two issues on which the Tribunal allowed the Original Application were: Firstly, that the petitioner was not competent to initiate

departmental proceedings since the Punjab Prison Rules are applicable; Secondly, there was inordinate or unexplained delay of eight years in the initiation of departmental proceedings.

2. So far as the first aspect is concerned, Mr. Satyakam states that the said issue has been held in favour of the petitioner by the Tribunal in a batch of Original Applications, including O.A. No.100/1/2013 titled ***V.P. Garg Vs. Lieutenant Governor of Delhi & Others*** decided on 26.03.2019.

3. Even if we accept that position, we have examined the facts of the case and we find that there is no proper explanation for the inordinate delay of eight years in the initiation of the departmental proceedings, and on that account, we are not inclined to interfere with the impugned order.

4. The respondent was serving as the Deputy Superintendent (Jail) at Tihar on the fateful day, i.e. 17.02.2004 when an undertrial prisoner Sher Singh Rana @ Pankaj – prime accused in the murder of Ms.Phoolan Devi, escaped from Central Jail No.1.

5. Mr. Satyakam has tendered in Court a list of dates to justify the said delay. We have perused the same. It only shows that the file was moving back & forth for preparation of the charge-sheet – which would be the case in every case where departmental proceedings are sought to be initiated against a delinquent officer. The same does not provide any exceptional reason to justify the inordinate delay of eight years in the present case.

6. We have also perused the charge memorandum issued to the petitioner in detail. The charge against the respondent reads as follows:

“ That the said Shri V.D. Pushkarna, while functioning as Dy. Superintendent (Deodi) on 17.02.2004 in Central Jail No.1, committed gross misconduct in as much as he failed to ensure the proper transferring out of the under trial prisoner Sher Singh Rana. Shri V.D. Pushkarna further failed to exercise control over his subordinate staff which resulted in the escape of one under trial prisoner Sher Singh Rana @ Pankaj, prime accused in the murder of Smt. Phoolan Devi, MP, from Central Jail No.1 of the CCS (Conduct) Rules, 1964.

Thus, Shri V.D. Pushkarna, Dy. Superintendent, Central Jail, by above acts of omission and commission failed to maintain devotion to duty and exhibited the conduct unbecoming of a Government servant contravening thereby the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.”

7. From the statement of imputation of misbehaviour in support of the article of charge, it is evident that in the hierarchy the Assistant Superintendent (Undertrial) functions under the Deputy Superintendent. The Undertrial Office which is the hub around which the whole procedure of outstation production revolves, is under the direct charge of Assistant Superintendent (Undertrial), who is assisted by warders.

8. The allegation against the respondent was that on 17.02.2004, the undertrial had to be transported to the Court of Special Judge, Gangster at Haridwar. On the said date, it appears that at about 07:05 a.m. one person carrying handcuffs in police uniform with the name Shri Arvind Kumar Belt No.4882 of DAP IIIrd Battalion reported at the main gate of the Central Jail No.1 to take custody of the accused Shri Sher Singh Rana for production before the aforesaid Court. The said Shri Arvind Kumar, Constable collected Court papers as well as diet money from Sh. Pragves, Sewadar in

undertrial prisoner's section and left with the said undertrial prisoner Sh. Sher Singh Rana. Subsequently, at about 07:45 a.m., another person claiming himself to be Shri Ashok Kumar, Constable, Belt No.2214 DAP IIIrd Battalion came to Central Jail No.1 to take the undertrial prisoner Sh. Sher Singh Rana for production in the outstation Court, as aforesaid. It then transpired that the person who earlier came to take the undertrial prisoner was an imposter.

9. In these circumstances, no direct negligence or dereliction in duty can be attributed to the petitioner. For this reason as well, we are not inclined to interfere with the impugned order of the Tribunal which has held that the inquiry cannot proceed on account of inordinate delay.

10. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 16, 2019

B.S. Rohella