

01.05.2023
Item No. 33
Crt. No.11.
KB

**MAT 109 of 2023
with
IA No. CAN 1 of 2023**

**Sunil Kumar Prasad
-Vs-
The Union of India & Ors.**

Mr. Achin Majumder
Mr. Nayan Rakshit
... For the appellant.

Mr. Suman Chattopadhyay
Mr. Rivu Das
... For the Respondents.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Challenge in this appeal is to the Order dated 12th December, 2022 passed in the Writ Petition, being WPA No.26319 of 2022.

By the said impugned Order, the Hon'ble Single Bench was pleased, *inter alia*, to hold that the writ petitioner/the present appellant before this Court was demoted to the post of Constable in view of the fact that while participating in the selection to the promotional posts to the rank of Head Constable and thereafter to the rank of Assistant Sub Inspector (ASI), the appellant did not disclose the pendency of a

criminal case against him. The Hon'ble Single Bench was further pleased to hold that by way of a self-declaration filed by the appellant before the authority on 12th September, 2022, no criminal case was stated to be pending against him.

Per contra, Learned Counsel for the Railway authority takes this Court to the Order of the Senior Divisional Security Commissioner, Railway Protection Force, Eastern Railway dated 27th August, 2022. From the said Order it is pointed out that upon an enquiry, the Railway Respondents discovered the pendency of criminal cases against the appellant/writ petitioner before the Learned Railway Judicial Magistrate, Kiul.

It is also pointed out that in spite of the appellant/the writ petitioner being given adequate opportunity to respond to the show cause notice issued against him, such opportunity was not availed of by the appellant/the writ petitioner and it was not clarified by the appellant that the said criminal cases were pending against him.

Learned Counsel for the Railway authority also produces before this Court self-declarations of the appellant submitted before the authority dated 4th

October, 2021, 20th November, 2021 and 12th September, 2021. It is disclosed from such self-declarations that the appellant/the writ petitioner has stated that no criminal case is pending against him.

Learned Senior Counsel for the appellant however turns his arguments on the purported denial of natural justice to the appellant in view of the failure of the Railway Respondent to extend adequate time to the appellant/the writ petitioner to file his reply to the show cause notice.

Heard.

Considered the materials placed.

This Court finds that the Hon'ble Single Bench was correct in holding that there has been suppression of material facts on the part of the appellant/the writ petitioner as regards to the pendency of criminal cases against him at the time of availing promotions to the posts of Head Constable and ASI.

In fact, this Court is informed that such criminal cases are still pending.

In the light of the above discussion, this Court finds no reason to admit the appeal and the connected application.

MAT 109 of 2023 with **IA No. CAN 1 of 2023** stands accordingly **dismissed**.

Since affidavits are not invited, other allegations to the contrary stand denied.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)