

**30.01.2023**

Item No.20  
Crt. No.11.  
KB

**FMA 4759 of 2015  
with  
IA No. CAN 4 of 2016  
(Old No. CAN 2784 of 2016)**

**Union of India and Ors.  
Versus  
Sri Raj Narayan Singh**

Mrs. Chandreyi Alam  
... For the Appellants.

Mr. Achin Kr. Majumder  
... For the Respondent.

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

Under consideration by this Court is MAT 519 of 2009 renumbered as FMA 4759 of 2015 filed by the Appellants/Union of India/Railways Protection Force. In the instant appeal the Order of the Hon'ble Single Bench dated 1<sup>st</sup> of December, 2008 passed in W.P. No. 15139 (W) of 2003 has been challenged.

By the said impugned Order, the Hon'ble Single Bench was pleased to set aside the Disciplinary Proceeding (for short *DP*), instituted by the Appellants/*RPF* against the present Respondent/Writ Petitioner.

This Court is taken through the Order sheets connected to this appeal which has been filed in 2009. From the Order sheets, the following transpires.

By the first Order dated 14<sup>th</sup> July, 2009, the Hon'ble Division Bench was pleased to condone the delay in filing the appeal and stay the operation of the Judgement and Order impugned until disposal of the appeal. Thereafter, on the 15<sup>th</sup> of February, 2010 and 24<sup>th</sup> March, 2010, none appeared for the Appellants. Thereafter, on the 2<sup>nd</sup> of May, 2011, again none appeared for the appellants, although the Respondent was represented. Thereafter, the appellants were represented on the three dates, i.e. 12<sup>th</sup> of May, 2011, the 14<sup>th</sup> of June, 2011 and the 16<sup>th</sup> of June, 2011.

Again, on 21<sup>st</sup> of June, 2011 and the 17<sup>th</sup> of November, 2011, none appeared on behalf of the appellants. On 18<sup>th</sup> November, 2011 and the 22<sup>nd</sup> of November, 2011, the appellants were represented as well as the Respondent/Writ Petitioner. On the 25<sup>th</sup> of November, 2011, again the appellants were present.

Thereafter, the matter appeared before the then concurrent Hon'ble Division Bench and *vide* Order dated 30<sup>th</sup> of November, 2011 and 20<sup>th</sup> of December, 2011, the appellants were directed to produce the relevant file connected to the *DP*. The matter was posted before yet another concurrent Hon'ble Division Bench and on 28<sup>th</sup>

June, 2013, the parties were not represented before the said Hon'ble Division Bench.

On the 12<sup>th</sup> of September, 2013 before the said concurrent Hon'ble Division Bench, the appellants were represented and prayed for time to obtain instruction. On the 24<sup>th</sup> of September, 2013, the appellants prayed for an accommodation and finally on the 18<sup>th</sup> of September, 2015 the appeal stood dismissed on the ground of non-appearance of the Learned Counsel for the appellants.

Mrs. Alam, Learned Counsel appearing for the appellants, draws the attention of this Court to the application being CAN 2784 of 2016, which is an application for recall of the Order of dismissal dated 18<sup>th</sup> September, 2015.

Mr. Majumder, Learned Counsel, appears for the Respondent/Writ Petitioner and points out that the *DP* was instituted in the year 1995 and the Respondent/Writ Petitioner was compulsorily retired in 1997. The Order of compulsory retirement has taken effect from 30<sup>th</sup> April, 1997. The Order of compulsory retirement was upheld by the Appellate Authority in 1998.

Learned Counsel for the Respondent/Writ Petitioner has submitted that due to pendency of this proceeding which the appellants have attended in fits and starts, the Respondent/Writ Petitioner is yet to receive his complete retirement benefits.

Heard.

Considered the records and the materials placed.

This Court finds that in view of the records of this proceeding the appellants have been unable to make out a case for condonation of delay.

In the clear view of this Court, the Appellants have not pursued this appeal with due diligence.

Accordingly, the prayer for condonation stands refused.

**IA No. CAN 4 of 2016 ( Old No.CAN 2784 of 2016) stands dismissed.**

This Court accordingly refuses to recall the Order of dismissal for default dated 18<sup>th</sup> September, 2015.

With the dismissal of this appeal, **COT 57 of 2019** which is on the day's list, also stands **disposed of**.

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.)**