

DL-13

16.07.2024
Court No.26
Bench ID-266046
(AD)
(Dismissed)

MAT 1665 of 2019
With
IA No.: CAN 1 of 2019 (Old No.: CAN 12058 of 2019)
With
IA No.: CAN 2 of 2019 (Old No.: CAN 12062 of 2019)

Union of India & Ors.
Vs.
Sukumar Pal

Mr. S. N. Dutta

... For the appellants.

1. Affidavit of service filed in Court be taken on record.
2. Respondent was served earlier. Thereafter, at the desire of the Court, learned Advocate represented the writ petitioner/respondent before the learned Single Judge was sought to be served by the Advocate for the appellants.
3. Affidavit of service filed in Court today states that such Advocate refused to accept service as the private respondent was no longer in contact with him.
4. Appeal is directed against the order dated August 20, 2019 passed by the learned Single Judge in W.P. No.26 (W) of 2019.
5. By the impugned order, the learned Single Judge allowed the writ petition and set aside the articles of charges furnished in second round of

disciplinary proceedings on the ground of delay.

6. Learned Advocate appearing for the appellants submits that, there was no delay on the part of the appellants in continuing with the disciplinary proceedings. He draws the attention of the Court to the first Memorandum dated January 24, 2013 relating to the charges as against the private respondent. He submits that, the private respondent was then an Inspector under the Railway Protection Force. The disciplinary proceedings initiated by such Memorandum dated January 24, 2013 could not be concluded since a writ petition filed by a private respondent being W.P. No. 16419(W) of 2011, the private respondent was directed to be promoted. Appellants promoted the private respondent in terms of such direction. Thereafter, the appellant due to his higher posting came out of the purview of the Railway Protection Force Rules, 1987. Consequently, the earlier disciplinary proceedings could not be continued with. Subsequently, the private respondent was transferred from one posting to the other. Thereafter, the authorities issued a Memorandum dated December 6, 2018 containing the articles of charges. He submits that, the time consumed by the authorities in proceeding with the departmental proceedings are due to the promotion of the private respondent as

also his transfer.

7. We considered the materials made available on record.

8. Private respondent before us was an Inspector of the Railway Protection Force when the first Memorandum dated January 24, 2013 was issued. Articles of charges enclosed with such Memorandum speaks of alleged acquisition of property beyond the known source of income. Private respondent was granted a promotion subsequent to the order dated May 15, 2014 passed in W.P. No. 16419 (W) of 2011. Significantly, the judgment and order dated May 15, 2014 passed in W.P. No. 16419 (W) of 2011 was passed by a learned Single Judge. In response to the query of the Court, learned Advocate appearing for the appellants submits that, no appeal was carried against such judgment and order. Appellants, therefore, accepted the judgment and order dated May 15, 2014 passed in W.P. No. 16419 (W) of 2011. In fact, appellants acted on it and granted promotion to the private respondent.

9. On the grant of promotion, the provisions of Railway Protection Force Rules, 1987 became inapplicable in respect of the private respondent so far as the disciplinary proceedings are concerned. The disciplinary proceedings,

therefore, initiated by the Memorandum dated January 24, 2013 could not be proceeded with. Appellants did not take any steps subsequent to the grant of promotion to the private respondent in 2014. In 2015, private respondent wrote to the appellants for dropping the charges. It is thereafter by a Memorandum dated December 5, 2018 that the appellants seek to rake up the same issue as that of the first disciplinary proceedings as against the appellants. Learned Single Judge noted the conduct of the appellants and particularly the delay in conducting the disciplinary proceedings and proceeded to quash the same.

10. We are in agreement with the view taken by the learned Single Judge. As noted above, appellants allowed a promotion to be granted pursuant to a judgment and order passed by a learned Single Judge without preferring any appeal therefrom. Thereafter, the appellants went into a hiatus for a period of at least four years in issuing the second Memorandum and that too, appellants activated themselves only after the private respondent approached the appellants to drop the first disciplinary proceedings.
11. In such circumstances, we find no merit in the present appeal.
12. **MAT 1665 of 2019** along with all connected

applications are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)