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SHER BAHADUR
v.
UNION OF INDIA AND ORS.

AUGUST 16, 2002

B

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

Service Law:

C

*Railway Services (Conduct) Rules, 1966; Section 3.1(i)(ii) and (iii)/
Railway Servants (Discipline and Appeal) Rules, 1986; Rule 6(vii) to (ix):
Appointment as casual labourer—Conferred temporary status on the post of
Khalasi in regular pay scale—Issuance of charge sheet by the Disciplinary
Authority—Dismissal on the ground of misconduct after conducting regular
enquiry—Challenging on ground of insufficiency of evidence—Rejected by*

D

*Tribunal and High Court—Correctness of—Held, sufficiency of evidence
postulates existence of such evidence which establishes nexus of charged
officer with the alleged misconduct—Since no such nexus could be found in
the enquiry report the finding of Inquiry Officer erroneous—Directions for
payment of compensation issued since it is not a fit case for reinstatement.*

E

**Appellant had served as casual labourer in Railway for a certain period
and subsequently he was re-engaged. Thereafter, he was medically examined
and conferred temporary status on the post of khalasi in regular pay scale.
He was issued a charge-sheet alleging that he obtained his appointment
fraudulently. A regular enquiry was conducted and as per enquiry report,**

F

**appellant was found guilty of the charge. Accordingly, disciplinary authority
dismissed him from service under Rule 6(vii) to (ix) of the Railway Servants
(Discipline and Appeal) Rules, 1986. He unsuccessfully challenged the order
of dismissal before the Central Administrative Tribunal. High Court also
dismissed the Writ Petition filed against the Tribunal's order.**

G

**In appeal to this Court, it was contended that enquiry report was based
no evidence and as such dismissal of the appellant was not justified. On behalf
of the respondents, it was contended that appellant was dismissed from the
service after conducting enquiry and complying with all the formalities.**

Allowing the appeal, the Court

H

HELD: 1.1. Documentary evidence referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the concerned authority was proved, is erroneous. [571-D-F]

1.2. The expression “sufficiency of evidence” postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence. Moreover, though, the disciplinary authority cited one witness in support of the charges, he was not examined. [571-C, D]

1.3. This is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained. [571-F, G]

2. Inasmuch as the appellant, a casual worker (khalasi), was in service for two years and it is more than a decade that he has been out of service, it is not a fit case to direct his re-instatement. In the interest of justice, Respondent No.1 is directed to pay the appellant compensation equal to average salary for a period of two years. [571-H; 572-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5055 of 2002.

From the Judgment and Order dated 16.5.2001 of the Allahabad High Court in C.M.W.P. No. 53498 of 2000.

Jagat Singh, Ashwani Sharma and Ranbir Yadav, for the Appellant.

V.C. Mahajan, A.K. Kaul and Ms. Anil Katiyar, for the Respondents.

A The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. Leave is granted.

The unsuccessful appellant before the High Court of Judicature at Allahabad assails the order of a Division Bench dismissing Civil Misc. Writ
B Petition No.53498 of 2000 on May 16, 2001.

The appellant claims that he had worked as a casual labourer during the period May 25, 1978 to November 23, 1979 under IOW/ALD. However, by order dated May 19, 1989 he was re-engaged along with three others by Mr. Ajit Singh, A.P.O. (Const.), Northern Railway, Kashmiri Gate, Delhi. It is
C further claimed that on December 20, 1990 he was medically examined and, having been found fit, he was granted temporary status on the post of khalasi in regular pay scale. While so, the Senior Civil Engineer (Const.), Northern Railway, Kanpur, U.P. (Respondent No.4) issued a charge-sheet memo alleging that he has fraudulently secured the said appointment letter duly signed by
D the said A.P.O. (Const.) without having worked prior to 1981 and/or without the specific and personal approval of General Manager or both and in that he had contravened Rule 3.1 (i) (ii) and (iii) of Railway Services (Conduct) Rules, 1966. He denied the charge. A regular enquiry was conducted and the appellant was found guilty of the charge. On December 13, 1994 the disciplinary authority imposed on the appellant punishment of dismissal from service with
E immediate effect under Rule 6 (vii) to (ix) of Railway Servants (Discipline and Appeal) Rules, 1986. The appellant challenged the validity of the said order of dismissal in Original Application No.1911 of 1994 before the Central Administrative Tribunal, Allahabad Bench, Allahabad. The Tribunal dismissed the said application by order passed on August 22, 2000 which was impugned
F in the afore-mentioned writ petition before the High Court of judicature at Allahabad. It is against the order of the dismissal of the said writ petition by the High Court dated May 16, 2001, that the appellant is in appeal in this Court.

Mr. Jagat Singh, learned counsel appearing for the appellant, has
G contended that the High Court erred in not appreciating the contention that the enquiry report was based on no evidence and as such there was no valid basis for dismissal of the appellant.

Mr. V.C. Mahajan, learned senior counsel appearing for the respondents, argued that after conducting enquiry and after complying with all the
H formalities, the appellant was dismissed from service. Both the Central

Administrative Tribunal as well as the High Court found that the dismissal was proper. A

A perusal of the judgment and order under challenge shows that the High Court having referred to the enquiry report found that there was oral and documentary evidence (Ex.P-1) to hold him guilty and that sufficiency of the evidence would not be a ground to challenge the order of the disciplinary authority by invoking the writ jurisdiction. B

It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh. R.A. Vashist, Ex. CVI/N.Rly., New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex.P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside. C D E F G

The next question is what relief can be granted to the appellant. Inasmuch as the appellant, a casual worker (khalasi), was in service for two years and it is more than a decade that he has been out of service. In the circumstances, we do not consider it to be a fit case to direct his re-instatement. In our view, H

- A** interests of justice would be met by directing respondent No.1 to pay the appellant compensation equal to average salary for a period of two years within two months from today.

The appeal is accordingly allowed with costs.

B S.K.S.

Appeal allowed.