Sher Bahadur vs Union Of India & Ors on 16 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3030, 2002 AIR SCW 3379, 2002 LAB. I. C. 2974, 2002 ALL. L. J. 2160, 2003 ALL CJ 1 22, 2002 (4) SLT 768, (2002) 6 JT 152 (SC), 2002 (6) JT 152, 2002 (8) SRJ 245, (2003) 1 JCR 12 (SC), 2002 (7) SCC 142, (2002) 95 FACLR 11, (2002) 4 ALL WC 2877, (2002) 3 LABLJ 848, (2002) 5 SCALE 616, (2002) 3 ESC 145, (2002) 3 SCT 1069, (2002) 3 SCJ 752, (2002) 4 MAHLR 719, (2002) 101 FJR 642, (2002) 5 SERVLR 600, (2002) 4 LAB LN 1183, (2002) 3 JLJR 99, (2002) 5 SUPREME 330, (2002) 3 CURLR 297, (2002) 4 PAT LJR 33, 2002 SCC (L&S) 1028

Bench: Syed Shah Mohammed Quadri, S.N.Variava

CASE NO.:
Appeal (civil) 5055 of 2002

PETITIONER:
SHER BAHADUR

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 16/08/2002

BENCH:
Syed Shah Mohammed Quadri & S.N.Variava.

JUDGMENT:

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 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 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 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 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 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 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 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 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.

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. 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, 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.