ITEM NO.108 COURT NO.3 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 839 OF 2008

SHIV NATH Appellant (s)

VERSUS

GEN.SECY.,INDIAN RLY.CONFERENCE ASSN&ORS Respondent(s)

(With office report)

Date: 15/12/2010 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Ms. Chandan Ramamurthi,Adv.

For Respondent(s) Mr. T.S. Doabia, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Mr. A.K. Sharma, Adv.
Mr. Shreekant N. Terdal,Adv.

UPON hearing counsel the Court made the following
O R D E R

Appeal is dismissed in terms of the signed order.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 839 OF 2008

SHIV NATH .....APPELLANT

Versus

GENERAL SECRETARY, INDIAN RAILWAY CONFERENCE ASSOCIATION & ANR. .....RESPONDENTS

O R D E R

The appellant was an employee of Indian Railway Conference Association ('IRCA' for short), a department of the Railways. In regard to certain charges, one of which was that he seized the muster roll/attendance register and

tore it, a chargesheet was issued to him and an enquiry was held. The enquiry officer, after holding an enquiry on 7.3.1980 and 8.3.1980, submitted an enquiry report holding the appellant guilty of the charges. As a consequence, the disciplinary authority terminated the appellant from service on 24.6.1980. The appellant challenged the termination by filing a suit (Suit No.955/1984) in the Court of the Munsif, Ghaziabad. The trial Court, by judgment and decree dated 20.4.1984, dismissed the suit. The appeal filed by the appellant was allowed by the first appellate Court by judgment dated 20.1.1990. It held that the enquiry was not proper and the evidence that was let

was not sufficient to establish the guilt of the appellant. As a consequence, it declared the order of termination as illegal and further declared that the appellant continued as a khalasi under IRCA. The said judgment was challenged by IRCA in a second appeal before the High Court. The High Court, by the impugned judgment dated 4.9.1992, allowed the second appeal. It held that the first appellate court could not re-appreciate the evidence produced in the domestic enquiry, as if it sat in appeal over the findings recorded in the domestic enquiry and the interference by the first appellate Court was not warranted. As a result, the judgment of the first appellate Court was set aside and the suit was dismissed. The said judgment of the High Court is under challenge in this appeal of the employee by special leave.

2. The first contention urged by the appellant is that the enquiry was ex-parte and he did not have an opportunity to cross examine the several witnesses who were examined in the enquiry. This plea was not raised by the appellant in his plaint and no issue was framed. On the other hand, the specific plea in the plaint was that when the plaintiff

received the letter of Enquiry Officer (informing the enquiry, date and venue) he informed the Enquiry Officer that he had complained to Schedule Caste Commission about

his victimisation and therefore the enquiry was not to be continued. Thus the appellant was aware of the enquiry but chose not to participate in it. It is of some interest to note that the enquiry report shows that the Enquiry Officer issued a notice dated 11.2.1980 informing the appellant that enquiry would be held at 11 a.m. on 7.3.1980 and 8.3.1980 and indicated the venue; that the said notice was acknowledged by the appellant on 12.2.1980; that the appellant, however, informed the Enquiry Officer that the disciplinary enquiry should be suspended till the 'Schedule Castes Commission' considered his representation in respect of alleged harassment and passed appropriate orders thereon; that the Enquiry Officer again sent a communication to the appellant calling upon him to attend the enquiry as earlier indicated; that inspite of it, the appellant did not attend the enquiry; and therefore, the enquiry was conducted on 7.3.1980 and 8.3.1980. The Enquiry Report also records that on 7.3.1980 the enquiry officer, witnesses and the appellant were present, but after sometime, the appellant became hostile and left the room even though he was required to participate in the enquiry. It is thus seen that notice was given and opportunity was given to the appellant. If he chose not to participate in the enquiry or cross examine the witnesses, he has to blame himself. We find no error or violation of principles of

natural justice as far as enquiry is concerned.

3. The next contention of the appellant is that the first appellate Court being the final Court of facts, the High Court ought not to have interfered with the decision of the first appellate Court. We find that the High Court

has framed appropriate questions of law and examined the matter. The High Court found that all the witnesses who were examined had given evidence that the appellant had torn the attendance register. The appellant admitted in the plaint that he was present when the attendance register was torn, but tried to contend that someone else tore it. The first appellate Court examined the evidence as if it was sitting in appeal over the evidence led in the domestic enquiry and by holding that evidence was not satisfactory and further holding that the punishment was disproportionate to the allegation against him, interfered with the punishment. It is well settled that courts will interfere only in cases of 'no evidence'. Courts cannot interfere on the ground that evidence was insufficient. Nor can Court interfere with the punishment unless it is shockingly disproportionate to the gravity of the proved charge. The High Court observed as follows:

> "As it appears from the allegation itself, the appellant preferred an appeal against the order of punishing authority but the said appeal was also dismissed. In this way, he exhausted the remedy available to him by filing departmental appeal. It was the punishing authority as also the appellate authority who went into the charge on the basis of the evidence and the respondent was found guilty and consequently, while the punishing authority awarded the penalty, the appellate authority dismissed the appeal against the said penalty.

The courts are not supposed to sit in appeal over the finding of the punishing and departmental appellate authority. The court can interfere only in the case court finds that it

was a case of no evidence or the conclusion arrived at was perverse in the light of the evidence.

On examination of the matter in this light I find that the first appellate court itself did not read the evidence correctly. The first appellate court was influenced by the statement of Sri A.R. Chatterji regarding whom the plaintiff-respondent's contention is that at

the relevant time, he was present before him for submitting the application. But this witness during his statement before the trial court when examined by the plaintiff stated clearly that in the examination in chief that he could not say whether or not the plaintiff was present in the office at the time of the delivery of the letter. In the cross examination, he has stated that he sits inside the office and the people deliver the letter from outside. He stated that the letter was, no doubt, received, but he could not say whether the said letter was given by the plaintiff or some body else. Thus, contention of the plaintiff based on the statement of Sri Chatterji, P.W.1 stands demolished by the statement of the said witness itself.

During the enquiry, all three witnesses were examined in support of the charge. Before the court also one of the said witness P.K. Banerji D.W.2 was also examined and he stated that he had seen the plaintiff-respondent torning the register. He further stated that beside him, there were two other witnesses also

whose statement were recorded during the

enquiry. In view of this evidence, it cannot be said that the case was based on the secret or biased enquiry. Thus, the report is not defective as observed by first appellate court.

It would be relevant to discuss the conduct of the plaintiff-respondent during his service. Because of his misconduct, he was removed but he repeatedly wrote letters to the higher authorities and therefore, on the direction of the Chairman, he was taken back in service but soon thereafter, he committed misconduct regarding which the enquiry proceeded against him but he again adopted the practice of writing letter to the authorities as has been alleged by him in the plaint itself. During the enquiry, opportunity was given to the plaintiff-respondent and the enquiry report was submitted after evidence in the case, was recorded. It was not proper for the first appellate court to have gone into the appreciation of evidence. He committed gross error by misinterpreting the evidence and his approach and appreciation of evidence was against the material statements. He did not read the evidence as a whole but gave

finding in favour of the appellant by reading out the portion which was in his favour while reading the evidence as a whole, no case of the plaintiff was made out even of the basic evidence produced before the court."

4. On the facts and circumstances, we are therefore

satisfied that the High Court was justified in reversing the decision of the first appellate Court. We find no reason to interfere. Appeal is dismissed.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
December 15, 2010.

.....J.
(A.K. PATNAIK)