IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1103/93.

Dated: 3.11.1999.

P.C.Jadhav — Applicant.

Mr.G.S.Walia — Advocate Applicant.

Versus

Union of India & Ors. — Respondent(s)

Mr.S.C.Dhawan — Advocate for Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library? Yes

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1103/93.

Wednesday, this the 3rd day of November, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

P.C.Jadhav,
C/o. Shri G.S.Walia,
Advocate High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Mumbai - 400 001. ...Applicant.
(By Advocate Mr.G.S.Walia)

Vs.

1. Union of India
through General Manager,
Central Railway, Bombay V.T.
Bombay - 400 001.

2. Divisional Electrical Engineer (G),
Central Railway,
Bombay V.T.
Bombay - 400 001.

3. Assistant Electrical Engineer (M),
Central Railway,
Kalyan. ...Respondents.
(By Advocate Mr.S.C.Dhawan)

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant is challenging the order of penalty dt. 3.5.1991 and the order of the Appellate Authority. The respondents have filed their reply opposing the application. We have heard Mr.G.S.Walia, the learned counsel for the applicant and Mr.S.C.Dhawan, the learned counsel for the respondents.

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2. The applicant was working as a Khalasi at the relevant time and he was charge-sheeted by a charge sheet dt. 3.5.1991 on the allegation of mis-conduct of dis-obeying the order of transfer. An enquiry was held. The Enquiry Officer held that the charge is proved against the applicant and then a copy of the Enquiry Report was furnished to the applicant and he was asked to make representation, if any, in respect of the same. Then, the Disciplinary Authority passed an order dt. 19.4.1990 holding that the charges are proved and imposed a penalty of removal from service. Being aggrieved by that order, the applicant preferred an appeal. The Appellate Authority by the impugned order dt. 3.5.1991 held that the findings of the Disciplinary Authority are warranted by the evidence on record and even the penalty is adequate, but however, on humanitarian grounds and to avoid hardship to the applicant and his family, he modified the punishment by taking a lenient view and imposed a lesser penalty of reduction of pay from Rs.875/- to Rs.800/- for a period of two years with cumulative effect. Being aggrieved by the order of the Appellate Authority, the applicant has approached this Tribunal.

3. At the time of argument, the learned counsel for the applicant pressed two points. One is that the order is bad on merits and even otherwise the alleged mis-conduct is not a serious mis-conduct to involve any punishment at all. Then, on the quantum of punishment he submitted that imposition to a lower scale with cumulative effect is very harsh and it has to be modified. On the other hand, the learned counsel for the respondents supported the impugned order.

4. As far as merits are concerned, we find that the

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allegation is that the applicant refused to take the relieving order with LPC etc. on a particular date. The applicant has no doubt denied the charges, but after regular enquiry there is a concurrent finding by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority that the charge is proved against the applicant. It is not a case of no evidence, but it is a case of appreciation of materials on record and forming an opinion one way or the other. It is well settled that a Court or Tribunal cannot sit in appeal over the Judgment of a Domestic Tribunal and cannot take a different view even if another view is possible vide A.K.Chopra's case (AIR 1999 SC 625). Therefore, in the facts and circumstances of the case we are not expected to re-appreciate the evidence on record and take a different view. The Enquiry Officer in his report has held that the charges are proved, which have been accepted both by the Disciplinary Authority and the Appellate Authority. After going through the materials on record, we do not find that any case is made out for taking a different view on merits. Unless there is some illegality or irregularity in conducting the enquiry or it is a case of no evidence, we cannot interfere with the findings of the Domestic Tribunal.

5. Now, coming to the question of quantum of punishment, it was argued that it is a case of alleged conduct of applicant in not taking the relieving order and may be he was angry because of the order of transfer. Any how, the fact that the applicant did not take the relieving order has been proved in the Enquiry and it amounts to dis-obeying an order of transfer. It may be, that the original punishment of removal from service was very harsh and dis-proportionate to the mis-conduct, that is how the

...4.

Appellate Authority has stated that on humanitarian grounds and considering his family and taking into consideration he has put in 17 years of service he took a lenient view and imposed a penalty of reduction of pay to a lower grade for a period of two years with cumulative effect. Even regarding the question of quantum of penalty, the scope of judicial review is limited. Even if another punishment is found reasonable by the Tribunal, it is not a case for interference. The trend of judicial decisions is that the Tribunal or Court can interfere with the quantum of penalty if it shocks the conscience of the Court or grossly dis-proportionate to the alleged mis-conduct.

But, having regard to the mis-conduct alleged against the applicant we cannot say that reduction of pay by two years is so dis-proportionate so as to call for interference by us. It is true that the reduction is made with cumulative effect which means that applicant's original pay will not be restored even after the period of two years. But, having regard to the facts and circumstances of the case, we are not in a position to say that the penalty is grossly dis-proportionate to the alleged mis-conduct. Therefore, we are not inclined to interfere even regarding the quantum of punishment.

6. In the result, the application fails and is dismissed. No order as to costs.

(B.N.BAHADUR)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.