IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.993/95.

Friday, this the 9th day of July, 1999.

Parshotam Dasrath Choudhary,
Hanuman Nagar,
Opp. to Dr. Bendales' Hospital,
Bhusawal. ...Applicant.
(By Advocate Shri R.S.Ahuja)

Vs.

1. General Manager,
   Central Railway,
   Bombay V.T.
2. Shri V.Banerjee,
   AOM (Assistant Operating Manager)Cog,
   Central Railway,
   Bhusawal.
3. P.K.Ranadey,
   Divisional Operating Superintendent,
   Central Railway,
   Bhusawal. ...Respondents.
(By Advocate Shri R.R.Shetty)

: O R D E R : (ORAL)

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

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant was working as Box Boy in the Central Railway at the relevant time. It appears that he remained absent from 1.12.1992 to 15.12.1992 and again from 6.3.1993 to 17.5.1993. Two charge sheets were issued regarding these two periods of absence. Then an Enquiry Officer was appointed, the Enquiry Officer questioned the applicant about the charges and the applicant appears to have pleaded guilty and on that basis the Enquiry Officer submitted his report that the charges are

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proved. On the basis of the Enquiry Report, the Disciplinary Authority imposed a penalty of dismissal from service. The applicant's appeal came to be rejected by the Appellate Authority. Then applicant made a revision petition to the higher authority which also came to be dismissed. Being aggrieved by these orders, the applicant has approached this Tribunal.

3. According to the applicant, no enquiry was held as required by Rules, there was violation of principles of natural justice. The punishment imposed is grossly dis-proportionate to the alleged mis-conduct. Applicant's explanation for the absence is his own sickness, his mother's sickness and wife's sickness. It is therefore stated that the applicant's absence was not wilful, but it was unavoidable. Therefore, the applicant prays that the order of dismissal from service be set aside and he should be reinstated in service with all consequential benefits.

4. Respondents in their reply have pleaded that proper enquiry has been held and applicant appeared before the Enquiry Officer and pleaded guilty and hence there was no necessity for holding any regular enquiry. That the punishment imposed is fully justified particularly having regard to the past conduct of the applicant in remaining absent unauthorisedly.

5. After hearing both sides, we do not find any merit in the contention of applicant's counsel that there was no proper enquiry or that there was violation of principles of natural justice or about taking admissions of the applicant. The enquiry has to be held by examining the witnesses only if the facts are in dispute. If the facts either admitted or not disputed, then there is no necessity for recording any evidence. The report of the Enquiry Officer and the proceedings clearly shows that

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separate questions were put to applicant which is clearly admitted by the applicant. It is also admitted that he did not obtain leave for his absence. Therefore, unauthorised absence is admitted. Therefore, the burden shifts on the applicant to show as to why he remained absent. To answer Question No.8 he pleaded his own illness. In answer to the last question, he pleaded that his mother was unwell and his wife was also sick. The applicant did not produce any evidence in support of his defence.

6. We are also not impressed by the argument of the learned counsel for the applicant that mere absence from service will not amount to mis-conduct.Every Government Official has to attend his duties as per rules. If he remains away from duty without applying for leave or permission, then it certainly amounts to mis-conduct. Therefore, in the present case unauthorised absence is proved and therefore mis-conduct has been proved.

7. Further argument of the learned counsel for the applicant is that even if mis-conduct is proved,the punishment of dismissal from service is grossly dis-proportionate to the mis-conduct and invited our attention to some of the decisions of the Supreme Court, High Court and Tribunal to show that the punishment of dismissal from service for mere absence for about two or three months is grossly excessive. On the other hand, the learned counsel for the respondents submitted that the scope of judicial interference in matters regarding quantum of penalty is very limited and normally the Tribunal should not interfere with the question of penalty.

8. We are conscious about our limitation regarding the scope of judicial interference even regarding the question of penalty. Normally, it is for the domestic Tribunal to decide as

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to what is the proper quantum of penalty or punishment. The scope of judicial interference is very limited. As observed by the Supreme Court in Apparel Export Promotion Council Vs. A.K.Chopra case (AIR 1999 SC 625) the Courts or Tribunals can interfere on the quantum of penalty only if it is grossly dis-proportionate to the mis-conduct so as to shock the conscience of the Court or Tribunal. We have to apply this test and find out whether the penalty imposed in the present case is grossly dis-proportionate so as to shock the conscience of the law.

9. On the face of it, we find that the penalty of dismissal from service appears to be grossly dis-proportionate to the proved and admitted mis-conduct i.e. for the absence of 15 days in one spell and again 2 months in another spell. The applicant did produce some medical certificate from Private Doctor about his own illness. He has further stated that his mother was unwell and his wife had given birth to a child. Having regard to the period of absence, in our view, the punishment of dismissal from service appears to be grossly dis-proportionate to the mis-conduct. As pointed out from one of the Judgments read to us, for a Civil Servant punishment of dismissal from service is like a death-sentence. He is thrown out on the road with no retirement or other benefits. The applicant has pleaded in one of the documents that he has two young children, widowed mother and wife who are depending on him. The learned counsel for the applicant at one stage pointed out that there was an enquiry against the applicant previously where he had already been punished for unauthorised absence, but this fact is not made a subject matter of the present charge sheet. There is no

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allegation in the charge sheet that the applicant was habitually remaining absent and therefore, serious view will be taken while considering the present absence. But, that circumstance had been taken into consideration at the time of imposing the penalty without bringing the same to the notice of the applicant.

In the facts and circumstances of the case, we find that the penalty of dismissal from service is grossly dis-proportionate to the mis-conduct so as to shock our conscience and on this ground the penalty has to be set aside.

10. Then the next question is as to what penalty is to be given. Again, the Supreme Court has observed in some of the cases that it is for the Disciplinary Authority to decide as to what is the proper quantum of penalty should be imposed. It may be, in an extreme case, to avoid further delay in the matter, the Tribunal in exceptional case can substitute penalty in place of penalty given by the domestic Tribunal. But, we feel that the matter should be left to the discretion of the Disciplinary Authority to decide as to what is the proper penalty having regard to the facts and circumstances of the case. But, in our view, this is not a case where major penalty is called for. Therefore, we leave the matter to the discretion of the Disciplinary Authoirty to award any minor penalty as provided in the rules, then he must also decide as to how the period from the earlier date of dismissal from service till the fresh order to be issued is to be treated for the purpose of salary and allowances, for the purpose of qualifying service for pension, continuity in service etc.

11. In the result, the application is allowed. While confirming the finding of mis-conduct against the applicant, the

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orders of the respective authorities on the question of penalty are hereby set aside. The matter is remanded to the Disciplinary Authority only to consider the question of appropriate penalty to the applicant in the light of the observations made in this order. He can hear the applicant and then award any one of the minor penalty as per rules and can also decide as to how the intervening period should be treated. Since this is a old case of 1993, we direct the Disciplinary Authority to pass an appropriate order within 3 months from the date of receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.