SUPREME COURT OF INDIA

Coal India Ltd.

Vs.

Mukul Kumar Choudhari

C.A.Nos.5762-5763 of 2009

(P. Sathasivam and R. M. Lodha JJ.)

24.08.2009

JUDGEMENT

R.M. LODHA, J.

1. Leave granted.

2. These two appeals by special leave are directed against the judgment passed by the Division Bench of High Court of Judicature at Calcutta on September 22, 2008 whereby the Division Bench affirmed the order of the Single Judge passed on July 26, 2007 insofar as reinstatement of the Respondent No. 1 was concerned but modified the order of the Single Judge by awarding him back wages.

3. Mukul Kumar Choudhuri, Respondent No. 1, joined his service with the Eastern Coalfields in 1992 as System Officer. In 1996, he was transferred to North-Eastern Coalfields, Assam. On September 16, 1998, the Respondent No. 1 proceeded on sanctioned leave upto September 29, 1998. However, after expiry of his sanctioned leave, he did not report to duty and despite reminders remained absent for six months without any authorization.

4. On March 18, 1999, the Director-in-Charge, North- Eastern Coalfields initiated disciplinary enquiry against the Respondent No. 1 under Rule 29 of the Coal India Executives Conduct Discipline and Appeal Rules, 1978 (for short, `Conduct Rules, 1978') for misconduct on his part by -(i) absenting himself without leave; (ii) Overstaying the sanctioned leave for more than four consecutive days; and (iii) Desertion of job and failure to maintain integrity and devotion to duty.

5. On May 31, 1999, the Respondent No. 1 sent letter of resignation. His resignation was, however, not accepted by the Management and, accordingly, he joined his duty on September 10, 1999.

6. In the enquiry proceedings, the Respondent No. 1 appeared before the Inquiry Officer and admitted the charges leveled against him. The Inquiry Officer concluded the enquiry and vide his report dated October 5, 1999 held that the delinquent was guilty of the charges as mentioned in the charge-sheet.

7. Upon receipt of the enquiry report, a second show cause notice dated December 10, 1999 was issued to the Respondent No. 1 indicating therein that in view of the findings recorded by the Inquiry Officer, termination of his services was proposed. The delinquent was asked to show cause as to why the punishment of termination of service be not awarded to him. A copy of the enquiry report was sent along with the second show cause notice.

8. The Respondent No. 1 responded to the second show cause notice. He submitted that he sincerely wanted to leave the Company for several personal problems but these were aggravated by unsympathetic attitude of the Management in not accepting his resignation. He submitted that he deserved no punishment and that his explanation be considered favourably.

9. By an Office Order dated November 29, 2000, the Respondent No. 1 was removed from service with immediate effect. The Respondent No. 1 pursued the departmental remedy but without any success. He also approached Calcutta High Court on more than one occasion raising grievance of non-consideration of the departmental appeal and the review application before Reviewing Authority and the departmental authorities not passing the reasoned order. It is not necessary to refer to these proceedings in details. Suffice it to say that as directed by the High Court, he challenged the order of removal before the Board of Directors which came to be dismissed on August 17, 2006. Then, he again approached the High Court by filing writ petition being Writ Petition No. 1334 of 2006.

10. The Single Judge of the High Court by his judgment delivered on July 26, 2007 allowed the writ petition, set aside the impugned orders and directed the reinstatement of Respondent No. 1. The Single Judge, however, did not award back wages to the Respondent No. 1 but declared that he be treated to be in continuous service without any break and without affecting his seniority.

11. The order of the Single Judge was challenged in separate appeals by both parties before the Division Bench. The appeal preferred by the present appellants was dismissed while the appeal preferred by the Respondent No. 1 was allowed and it was held that he was entitled to back wages for the period on and from the year 2000 until reinstatement.

12. We heard Mr. Gopal Subramanium, learned Solicitor General and the Respondent No. 1 in-person.

13. Inter alia, the misconduct alleged against the Respondent No. 1 was unauthorized absence from duty for more than six months. The delinquent admitted the charges before the Inquiry Officer. He stated :

I admit the charges. However, I desire to state reasons for my absence and is given below:

i) I did not have any intention nor desire of disobeying order of higher authority or violate any of the Company's rule and regulations and.

ii) The reason is purely personal which cannot be produced by any evidence to prove and is beyond my control.

14. The admission on the part of delinquent before the Inquiry Officer leaves no manner of doubt that the charges against the delinquent stood fully proved. He was given second show cause notice and a copy of the enquiry report was annexed thereto. He sent his written response to the second show cause on July 15, 2000.

15. Office Order dated November 29, 2000 reads thus :

Coal India Ltd.

10, Netaji Subash Road,

Calcutta - 700001

Ref. No. CIL/C-5A(iii)/740 Dated : 29.11.2000

ORDER

WHEREAS a Memorandum No. NEC/ EE/DIC/99/10/ 621 dated 18.03.99 was issued to Sri M.K. Choudhury, Manager (Systems), North Eastern Coalfields for unauthorized absence from duty w.e.f. 30.09.1998, and WHEREAS the written explanation submitted by Shri Choudhury vide dated 31.05.99 having been found not satisfactory, a departmental enquiry was ordered and conducted wherein Shri Choudhury fully participated. The Inquiring Authority submitted his report wherein the charge of unauthorized absence w.e.f. 30.09.98 against Sri M.K. Choudhury, was proved beyond doubt. A showcause Notice along with the copy of the enquiry report was also sent to him for making representation thereon, and; WHEREAS the, Chairman-cum-Mg. Director, Coal India Limited, after careful consideration of the memorandum dated 18.03.1999 report of the Inquiring Authority dated 05.10.99 enquiry proceedings, representation dated 15.07.2000 of Shri M.K. Choudhury and other documents on record has come to the conclusion that the Charge of unauthorized absence w.e.f. 30.09.98 against Shri M.K. Chowdhury, Manager (Systems), NEC has been proved beyond doubt.

NOW THEREFORE, the Chairman-cum-Mg. Director, Coal India Limited as Disciplinary Authority, considering the gravity of the offence has imposed the penalty of removal from service on Sri M.K. Choudhury, Manager (Systems), North Eastern Coalfields with immediate effect. Accordingly, Sri Choudhury is hereby removed from service with immediate effect.

This issues with the approval of Competent Authority.

(N.K. Sharma)

Director (Technical)

16. It is apparent therefrom that it is the disciplinary authority who took the decision of imposition of penalty of removal. The issuance of the order is by Director Technical only. There is no procedural illegality or irregularity in the disciplinary proceedings. The charge of unauthorized absence for more than six months is admitted by the delinquent and clearly established.

17. In the case of State of Andhra Pradesh and Others v. Chitra Venkata Rao1, this Court considered the scope of judicial review in dealing with departmental enquiries and held:

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that 1 (1975) 2SCC 557 conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. .....

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a

finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

18. It has been time and again said that it is not open to the High Court to examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Inquiry Officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.

19. The Single Judge of the High Court in paragraphs 43 and 44 of the judgment observed thus:

43. This Court is of the view that the so-called order dated 29.11.2000 is a mere communication WITHOUT ACTUALLY serving the original Order of the Disciplinary Authority. Merely transmitting the decision of the Disciplinary Authority was not sufficient since this was a matter involving the punishment of removal from service entailing civil consequences.

44. We are dealing with a case of removal from service for an alleged absence of 6(six) months. This Court is of the view that the Respondents were bound to adhere to a fair and transparent procedure by firstly serving the actual order of the Disciplinary Authority upon the petitioner and then, by giving reasons as to why they chose not to agree with what the Petitioner wanted to say qua his absence when, after admitting the absence, he gave reasons as to why he had remained absent. They were also obliged to strictly obey with the Orders of this, court. In that view of the matter, the argument of Mr. Aloke Banerjee to the effect that the Respondents were not required to give reasons, are not acceptable to this Court. Consequently the Judgments cited by him namely AIR 1987 SC 2043 and the other Judgments such as 2001 (2) CHN 632 and 1991(2) SCC 716 are held to be not applicable because in this case, it was the desire and Order of the Hon'ble Division Bench that the Respondents should deal with the matter in accordance with law. In the opinion of this Court, in accordance with law means and includes observing the principles of natural justice and giving reasons because the Respondents were supposed to be dealing with his pleas relating to his explanations which were so very very crucial to his case. Consequently and in the facts and circumstances of this case, none of the Judgments cited by Mr. Banerjee can be said to have any Application.

20. In what we have already discussed, we find it difficult to accept the view of the Single Judge.

21. The Division Bench like the Single Bench fell into grave error in not adequately adverting to the fact that the charges were admitted by the delinquent unequivocally and unambiguously and, therefore, misconduct of the Respondent No. 1 was clearly established. We are, therefore, unable to persuade ourselves to concur with the view of the High Court.

22. The question, however, remains : is the punishment of removal grossly disproportionate to the proved charge of unauthorized absence for more than six months?

23. In order to answer the aforesaid question, it would be appropriate to refer to a few of decisions of this Court wherein doctrine of proportionality has been considered. In Union of India and Another v. G. Ganayutham2, this Court elaborately considered the proportionality in the administrative law in England as well as in our own country. The court considered some important English decisions, viz., Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation3, Council of Civil Service Unions v. Minister for Civil Service4, R. v. Goldstein5 and R. v. Secretary for Home Dept. ex. p. Brind6 and few decisions of this Court, viz., Ranjit Thakur v. Union of India7, State of Maharashtra v. M.H. Mazumdar8, Ex-Naik Sardar Singh v. Union of India9, Tata Cellular v. Union of 2 (1997) 7SCC463 3 (1947) 2All ER 680 4 (1984) 3 All ER 935 5 (1983) 1 All ER 434 6 (1991) 1 All ER 720 7 (1987) 4 SCC 611 8 (1988) 2 SCC 52 9 (1991) 3 SCC 213 Co.11 and summed up position of proportionality in administrative law in England and India thus :

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational -- in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay (1987 AC 514), Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair 10 (1994) 6 SCC 651 11 (1996) 3 SCC 709 balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as

aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of proportionality and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

24. Dealing with the question of proportionality with regard to punishment in disciplinary matters, the court said :

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of proportionality. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to irrationality, there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in outrageous defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain Ranjit Thakur.

33. In Ranjit Thakur this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749] a three-Judge Bench said the same thing as follows: (SCC p. 762, para 18)

18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.
Similar view was taken in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora [(1997) 3 SCC 72] that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case that the Court might -- to shorten litigation -- think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, State of Maharashtra v. M.H. Mazumdar cannot be of any help.

25. Again, in the case of Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Another this court considered the doctrine of proportionality and it was held :

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the doctrine of proportionality.

18. Proportionality is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise--the elaboration of a rule of permissible priorities.

19. de Smith states that proportionality involves balancing test and necessity test. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade Forsyth: Administrative Law (2005), p. 366.]

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is 12 (2007) 4 SCC 669 well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no pick and choose, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a sledgehammer to crack a nut. As has been said many a time; where paring knife suffices, battle axe is precluded.

22. In the celebrated decision of Council of Civil Service Union v. Minister for Civil Service(1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL) Lord Diplock proclaimed: (All ER p. 950h-j)

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call `illegality', the second `irrationality' and the third `procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of `proportionality'.... (emphasis supplied)

23. CCSU has been reiterated by English courts in several subsequent cases. We do not think it necessary to refer to all those cases.

24. So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU, this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases.

25. In Hind Construction Engg. Co. Ltd. v. Workmen (AIR 1965 SC 917), some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. This Court held that the absence could have been treated as leave without pay. The workmen might have been warned and fined. (But)

It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner. (AIR p. 919, para 7) (emphasis supplied)

The Court concluded that the punishment imposed on the workmen was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed. (AIR pp. 919-20, para 7) (emphasis supplied)

26. In Federation of Indian Chambers of Commerce and Industry v. Workmen [(1972) 1 SCC 40], the allegation against the employee of the Federation was that he issued legal notices to the Federation and to the International Chamber of Commerce which brought discredit to the Federation--the employer. Domestic inquiry was held against the employee and his services were terminated. The punishment was held to be disproportionate to the misconduct alleged and established. This Court observed that: (SCC p. 62, para 34)

[T]he Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation.

27. In Ranjit Thakur referred to earlier, an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court-martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.

28. Applying the doctrine of proportionality and following CCSU, Venkatachaliah, J. (as His Lordship then was) observed: (SCC p. 620, para 25)

The question of the choice and quantum of punishment is within the jurisdiction and discretion of

the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. (emphasis supplied)

26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27. Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent No. 1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement. Parties will bear their own costs.