(2012) 09 DEL CK 0556

In the Delhi High Court

Case No : Writ Petition (C) 1300 of 1988

P.N. Saluja APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : (2013) 1 LLJ 204

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Rajiv Kapur and Ms. Vatsala Rai, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—This writ petition has been filed by the petitioner against the respondent challenging the decision of his erstwhile employer, the respondent herein, to remove him from service after he had been found guilty of some acts of misconduct in the domestic enquiry held against him. The relevant facts are that the petitioner was employed with the respondent in the year 1967 as a clerk and to begin with he was posted in one of the bank?s branches in Varanasi. In the year 1970 he was transferred to Kanpur and from there he was brought to Delhi in the year 1971. He came to be promoted as an Officer in October, 1977 and then was transferred to Firozpur Jhirka in September, 1980. However he did not join there and the respondent then issued a fresh transfer order transferring him to Gurgaon where he joined in November, 1980. From Gurgaon he was transferred to Palwal sometime in the year 1981 and finally in 1982 he was transferred to Faridabad.

2. It appears that on 8th June,1983 the petitioner came to the bank?s regional office in Delhi from Faridabad to enquire about his increment which according to him was long overdue but was not being given to him. During that visit he met the Regional Manager and in that meeting he allegedly talked to the Regional Manager rudely. That incident led to his suspension on 13.06.1983. Nothing

happened thereafter for quite sometime and it appears that the management had started digging out some more material against the petitioner to be used against him in the contemplated disciplinary proceedings against him and it succeeded in gathering some material which showed commission of some other acts of misconduct also by the petitioner in the earlier years. Then in October, 1983 he was served with a charge-sheet in respect of his misbehavior with the Regional Manager on 8th June,1983 and besides that allegation some other allegations of misconduct committed by him in the past were also leveled against him and he was required to submit his explanation. The allegations leveled against him were that:-

1. He while posted at Mehrauli Road (Gurgaon), Palwal and Sarai Khwaja (Faridabad) branches left the stations of his postings and commuted daily from Delhi without obtaining prior permission of the controlling authority.

2. He submitted a false T.A. Bill for Rs 715/- on account of his transfer from Connaught Circus New Delhi to Mehrauli Road (Gurgaon) Branch wherein he claimed Rs. 500/- by way of incidental charges(packing, cartage etc.) when he was not entitled to it as he never shifted his residence/luggage to Gurgaon and daily commuted from Delhi.

3. He submitted a Mid-Academic Transfer Allowance bill for Rs. 740/- for the period 19th September 1980 to 30th April 1981 by concealing the fact of his having not shifted his residence to Gurgaon. Incidentally, he was relieved of his duties from Connaught Circus (New Delhi) Branch as at the close of business on the 18th September, 1980 on transfer to Firozepur Jhirka Branch and remained unauthorized absent from duty without reporting thereat. Subsequently, his transfer order was modified for Mehrauli Road, Gurgaon Branch and he reported thereat on the 27th November, 1980.

4. He while posted at Palwal Branch, again falsely claimed a sum of Rs.1000/- as Mid Academic Transfer Allowance for the period July 1981 to April 1982 when he was not entitled to it as his children were already studying in Delhi while he was transferred from Mehrauli Road (Gurgaon) to Palwal Branch and he never shifted his residence to Palwal.

5. While posted at Palwal Branch, he took an advance of Rs 1500/- on 28/5/1982 for visiting Kanpur under Home Travel Concession during the period 16/6/82 to 30/6/82 by giving a false statement that his place of domicile was Kanpur whereas it was New Delhi as per Bank?s record. The amount of advance has not been refunded by him so far despite reminder.

6. He was advised by our Palwal Branch Manager on the 17th August, 1981 to take over complete charge of Field Officer''s duties from Shri M.L. Valecha, Officer JAGS-I, which he failed to do despite reminder as he was whiling away the time. On the 16th October, 1981, he advised the Branch Manager of having taken charge of only 60 borrower''s accounts out of 631. He against his halting allowance for which he would be entitled for, asking over charge of the Field

Officer''s duties. Instead of submitting any T.A. Bill, he again requested the Branch Manager on 1st May, 1982 to grant an advance of Rs. 5000/- to be adjusted on submission of the bill for taking over as Field Officer. His request was not acceded to by the Branch Manager and he was asked to submit bill, if any. He was relieved from Palwal Branch for Sarai Khwaja Branch on the 30th September, 1982. After reporting at Sarai Khwaja Branch he prepared a T.A. Bill for Rs. 4197/- in connection with his transfer from Mehrauli Road (Gurgaon) to Palwal Branch wherein he claimed halting allowance amounting to Rs. 3660/- for the period 17th August to 16th December 1981 on account of taking over as a Field Officer. On the 11th January 1983, he unauthorized credited his own savings bank account, maintained at Sarai Khwaja Branch with the sum of Rs. 4197/- and debited Palwal Branch through Branch clearing General Account representing amount of claim in respect of the aforesaid T.A. Bill. Both the debit/credit vouchers were passed by him and the relative transfer responding advice was also signed by him. The following irregularities inter alia have been committed in claiming the bill:-

a) He claimed traveling expenses from R.K. Puram (New Delhi) to Palwal, whereas he should have claimed the account permissible from Gurgaon to Palwal.

b) He claimed halting allowance for the period of his availing of the leave from 28th September to 1st October 1981 and 19th October to 23rd October 1981;

c) He was not entitled to claim halting allowance for taking over charge of Field Officer''s duties as he joined Palwal Branch on the 11th August 1981 as an ordinary officer and it was decided subsequently to entrust him the powers of Field Officer. Besides, he was also paid house rent allowance during the material period as per his entitlement.

7. He obtained an advance of Rs. 4000/- on the 11th November 1982 at Sarai Khwaja Branch to meet the traveling expenses of his going to Puri under Leave Fare Concession facility. While submitting the relative T..A. Bill for Rs. 3097.50 in February 1983, he did not refund Rs. 902.50, representing excess amount of advance obtained by him.

8. On the 8th June 1983, he while posted at Sarai Khwaja Branch, unauthorized absented himself from duty from 3.00 PM onward and left the station of his posting without obtaining prior permission from the Branch Manager. On the same day at about 4.20 PM, while Shri H.R. Magon, the Regional Manager was discussing various matters with Shri J.C. Malhotra, Administrative Officer (General Banking) and Shri G.R. Mittal, Officer JMG S-1 in his cabin, he entered his cabin without permission, shouted and thumped the table insisting on the release of his held up increment(s). Despite Shri Magon?s explaining to him the position regarding the delay in the release of his increment(s) and asking him to behave properly, he shouted at the top of his voice and used derogatory language and threatened him(Shri Magon) with dire consequences. Some of the remarks passed by him are as under:-

Tu Bada BM Aa Gaya hai. Tere jaise kai Dekhe. Bada apne ghar ka daftar bana rakha hai. Tu kursi ke upar baith kar bol raha hai, chal neechay, utar tumhen dekh lunga. Tujhe kaya samajhta hoon main." "Array, hum to Lord hain, hamsen poochhnay wala kaun hai. Tum aur tumhara Branch Manager kya hai. Mai kisi ki kia parwah karta hoon. Mujhse bada kaun hai.

9. He also misbehaved with Shri J.C. Malhotra, Administrative Officer (General Banking) and Shri M.L. Gauri, Officer JMGS-I who tried to intervene and pacify him.

3. The petitioner had submitted his reply to the charge-sheet wherein he had refuted all these charges. The reply to the charge-sheet is as follows:-

The item wise reply is submitted as below:-

(1) It is denied that I commuted daily from Delhi and left the station of my posting without obtaining prior permission of the competent authority during the periods of my posting at M. Road Gurgaon, Palwal and Sarai khawaja (Faridabad), branches.

(2) It is denied that I have submitted a false T.A. Bill for ` 715/- on my transfer from Cannaught Circus, New Delhi to M. Road, Gurgaon Branch. However it is admitted that I submitted a claim for Rs.500/- on account of incidental charges (packing, cartage etc.) on account of my shifting the Residence/luggage. It is denied that I never shifted my residence to Gurgaon and daily commuted from Delhi.

(3) It is admitted that I have submitted Mid-Academic Transfer Allowance bill for Rs.740/- but it is denied that I concealed the fact of my having not shifted my residence.

The incident refer in the paragraph regarding my absence from duty was the subject of the Disciplinary proceedings vide DAC/RI-PCF/856 dated 26th December 1980, hence it is a matter of record. However, the same cannot be the subject matter of the Present Proceedings.

(4) It is denied that I again falsely claimed a sum of Rs. 1,000/- as Mid-Academic Transfer Allowance. It is further denied that I was not eligible to it. It is denied that I never shifted to Palwal.

(5) It is admitted that I have taken an advance for Rs.1,500/- somewhere in the month of May for visiting Kanpur my place of Domicile as per my initial appointment. The advance leaves were duly sanctioned by the authorities empowered. Assuming though not admitting that I have inadvertently at the time of my Promotion mentioned the place of my domicile as New Delhi, same could have been treated as mistake subject to be corrected on request. However the amount of Rs. 1,500/- under controversy has been recovered from my subsistence allowance for the month of October 1983.

(6) As regard para VI, I submit that T.A. Bill for Rs.4197/- which included

Rs.3660/- as H.A. for the period of 17 August to 16 Dec. 81 on account of taking over as field officer was submitted by me. It is denied that on 11th Jan 83 I unauthorized credited my own S/B A/C maintained at Sarai Khawaja Branch with sum of ` 4197/- and debited the Palwal Branch.

However it is stated that I took an advance of Rs.4197/- duly sanctioned by the Branch Manager against the said Bill.

I submit the following reply to the alleged irregularities pointed in this para:- At the outset I will like to submit that so-called irregularities mention as (a), (b), (c) were neither pointed out to me nor I was asked to amend so-called irregularities.

(a) On being transfer from M. Road Gurgaon on 9th July 81 to Ferozepure Jhirika I joined my family in Delhi while availing the joining time. During this period I met the Controlling Authority when I was given fresh order for transfer to Palwal Branch. The order was received by me in person in Region No. 1, Palwal was in order and there was no irregularity.

(b) My claim about H.A. for the period of 28 Sept to 1st Oct 1981 and 19 Oct to 23rd Oct,1981 was permissible within the rules and there were no irregularities.

(c) It is denied that I was not entitled for H.A. for taking over charge of Field Officer?s duties as I join Palwal Branch as an ordinary officer. The same Allowance was in order since I was never received any communication from the concerned authorities regarding irregularities.

(7) The Bill for L.F.C. was duly submitted in the Branch and the difference could have been recovered from my Account/Salary. I was never advised any thing in this regard by Branch Manager/Controlling Authority.

(8). On 8th June 83, when another time I visited Region I to request the release of my increment, which was due on 1st October, 82, Shri Magan met me in the Hall. I requested Shri Magan to release the increment, during the submission he abused me and rebuked me. He said "Bhan........ Tu apne app nu gunda samjhna ae, mei teri netagiri wada desa. Tu menu Marwaha samjiha hoi hai" I protest I said that I had come to request the release of my increment and it did not behove of a Regional Manager to abuse a Junior Officer and was not comparing Mr. Marwaha (his predecessor) with him and I would report the matter to C.R. M & if need to C.G.M. "Go then to CGM and get your increment released from C.G.M." I went to C.R. M.''s cabin where I learned that he has gone to attend the felicitation function being held in honour of Shri Dixit on his promotion as D.M.D. in H.O. at 4.30 p.m.

9. At the time of the incident I was not aware that J.C. Mehrotra was A.O. (General Banking) or for that matter a Staff member. I thought him to be an outsider. I strongly deny any misbehavior with Shri Mehrotra. Shri Gauri was not present at the time of the incident.

Thus from the above submission it is clear that I have not violated Rules 32 (4)

(5) and 40 (1).

I submit this explanation under protest as I have not been supplied with copies of complaints/investigating reports/statements of witnesses/documents/service rules. Even my request to inspect the concerned documents has not been acceded to.

4. The disciplinary authority was not convinced with the said reply given by the petitioner to the charge-sheet so it was decided to initiate a regular departmental enquiry against him. An Enquiry Officer was appointed who conducted the enquiry during which eleven witnesses were examined from the side of the respondent bank and the petitioner besides examining himself produced some other witnesses also in his defense. The enquiry officer accepted the evidence adduced from the side of the respondent-bank and not that of the petitioner and held him guilty of all the charges except for charge No. 6 in respect of which the conclusion was that the allegations leveled in charge 6(c) that the petitioner had wrongly claimed halting allowance was not proved and his plea in defense was acceptable. So, that charge was held to be proved partly.

5. The disciplinary authority then decided to award the punishment of removal from service to the petitioner vide order dated 24th June,1985. That decision was challenged by the petitioner before the Appellate Authority of the bank by filing a departmental appeal but that appeal was rejected on 21.11.1985.

6. The petitioner then approached this Court with the present writ petition for quashing the entire departmental proceedings from the stage of his suspension onwards till the dismissal of his departmental appeal and for his re-instatement in service with all consequential benefits. In the writ petition one of the grounds taken by the petitioner for claiming these relief?s was that the Appellate Authority had not passed a reasoned order while dismissing his appeal against the order of the disciplinary authority. this Court vide order dated 13th January, 2011 accepted that ground of challenge and directed the appellate authority to pass a fresh reasoned order in respect of the petitioner''s appeal.

7. While directing the Appellate Authority of the respondent bank to pass a fresh order this Court had observed in the order dated 13th January, 2011 that the writ petition stood off. Thereafter, the Appellate Authority of the respondent bank passed a fresh order on 20th May, 2011 in which it was observed that the Disciplinary Authority had held six charges as ''proved'' and three charges as ''partly proved''. However, finally the appeal of the petitioner was once again rejected.

8. The petitioner then filed an application before this Court raising a grievance that the Appellate Authority had once again not dealt with his various grounds of appeal and sought a fresh order from this Court. The respondent bank opposed that application on the ground that if at all the petitioner was aggrieved by the fresh order passed by the Appellate Authority he should have filed a fresh writ petition. However, this Court did not accept that stand taken by the respondent

bank and vide order dated 27th January, 2012 held that even though the petitioner had described his application as a review application he was in fact seeking disposal of his writ petition on merits since earlier this Court had simply asked the Appellate Authority of the respondent bank to pass a fresh reasoned order and further that even though at that time this Court had mentioned in the order dated 13th January, 2011 that the writ petition stood disposed off but actually what this Court intended to say was that if after the passing of the fresh order in appeal by the Appellate Authority the petitioner would still feel aggrieved then this Court would take up the matter again for considering all other grounds of challenge taken by him in his writ petition against the enquiry proceedings, enquiry officer''s report as well as the decision of the disciplinary authority to dismiss him. Accordingly, this Court decided to take up the writ petition once again for hearing. The respondent bank challenged that order before the Division Bench by filing a Letters Patent Appeal but that appeal was dismissed by the Division Bench.

9. Thereafter a fresh, but brief, hearing took place during which the petitioner, who has been fighting his legal battle in person, once again kept on contending, as he had contended at the time of earlier hearing also, that his dismissal from service was illegal and the entire disciplinary proceedings from the stage of his suspension till the imposition of punishment of his removal from service and its affirmation by the Appellate Authority were mala fide since during the relevant period he had been protesting against the bank?s illegal and arbitrary policy of transfer of its employees as he Chairman of SBI Officers Forum(which fact even the counsel for the respondent bank did not refute) and that he himself was also personally a victim which was evident from the undisputed fact that during a very short period of couple of years he had been asked to move from Delhi to Firozpur and then to Palwal and from there to Gurgaon and finally to Faridabad and thereafter he was permanently transferred out of the bank and sent back home. It was also contended that the enquiry held against him was vitiated since the enquiry officer had not even bothered to discuss his defense in respect of charges No. 8 and 9 which were the main charges leveled against him and which really had prompted the management to charge-sheet him and in order to magnify the incident of 8th June,1983 other stale and totally innocuous charges had also been included in the charge sheet. It was further contended that in the enquiry none of the charges stood proved but the enquiry officer arbitrarily held him guilty. The petitioner further argued that even if all the charges are accepted to have been proved the penalty imposed upon was shockingly disproportionate to those charges.

10. On the other hand Mr. Rajiv Kapur, the Learned Counsel for the respondent bank, also maintained his earlier submissions that there was no illegality whatsoever in the disciplinary proceedings from the beginning till the end and further that this Court in any event cannot examine the evidence adduced by the bank during the domestic enquiry re-appreciate the same and to examine the correctness of the findings of the enquiry officer as an appellate court. It was

also contended that even if a detailed and deep analysis of the entire matter was to be undertaken by this Court the result would be that no illegality would be found by this Court to have been committed by the management of the respondent bank in ordering removal of the petitioner from service because he had committed very serious acts of misconduct of using rude and unparliamentarily language with his Regional Manager and two other bank officials and by claiming certain allowances which were not due to him which showed that he was not a man of integrity and so the punishment of removal from service was very much the appropriate punishment which he deserved to be awarded and, therefore, was rightly awarded that punishment by the disciplinary authority and the Appellate Authority had also rightly affirmed the same despite the fact actually no financially loss had occurred to the bank because of the petitioner lodging claims for certain allowances which to his knowleged he was not entitled to get. In support of these submissions Learned Counsel had cited various judgments of the Supreme Court. Those judgments are reported in State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, , Charanjit Lamba Vs. Commanding Officer, Southern Command and Others, , Dr. N. Balakrishnan Vs. Nehru Memorial Museum and Library Society and Others, , The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao, , J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, , State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, , State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, , State Bank of India and Others Vs. Ramesh Dinkar Punde, , Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, , Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, , State Bank of India and Another Vs. Bela Bagchi and Others, , Ganesh Santa Ram Sirur Vs. State Bank of India and Another, , State Bank of India and Another Vs. Bela Bagchi and Others, , V. Ramana Vs. A.P.S.R.T.C. and Others, , The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., , Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , (1999) 2 (L&S) SCC 1067 , New Shorrock Mills Vs. Maheshbhai T. Rao, , Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, , B.C. Chaturvedi Vs. Union of India and others, , State Bank of India and Others Vs. Samarendra Kishore Endow and Another, , State of Andhra Pradesh Vs. Sree Rama Rao, and Workmen of English Electric Company of India Ltd., Madras Vs. Presiding Officer and Another, .

11. After having examined the entire record of the disciplinary proceedings held against the petitioner, copies whereof were made a part of the writ petition by him I have come to the conclusion that it was really the incident of 8th June,1983 when the petitioner had allegedly misbehaved with his Regional

Manager Mr. H.R. Magon and two other bank officials Mr. J.C. Malhotra and Mr. M.L. Gauri which had prompted the management of the respondent bank to initiate disciplinary proceedings against him but in order to show that only for that incident he was not being proceeded against and in fact in the past also his conduct was blameworthy it was decided to dig out old records to find some other irregularities also which he might have committed in the past so that he could be thrown out of job. When some faults are to be found out against some employee who has served his employer for more than fifteen years the employer can easily find some minor faults at least and club them with a serious charge to be used against the employee to get rid of him if he is inconvenient for the employer and in this case the management succeeded in gathering some material from its old records to be used against the petitioner and that material was used for framing seven more charges in addition to the charge of his misbehavior with the Regional Manager and two other bank officials on 8th June,1983. The other irregularities allegedly committed by the petitioner were committed during the years 1980-82 and it is not the case of the respondent bank that those irregularities came to be noticed only after the incident of 8th June, 1983. The petitioner had taken the plea before the enquiry officer also that the other irregularities allegedly committed by him prior to the incident of 8th June,1983 were never brought to his notice earlier and the same were afterthought. Therefore, the petitioner could not have been proceeded against departmentally in respect of those charges which can safely be said to be stale as well as innocuous.

12. In any event, as per the second decision of the Appellate Authority given pursuant to the direction of this Court, the Disciplinary Authority had found six charges out of nine to be fully proved and three to be partly proved. That observation of the Appellate Authority was not challenged before me when the writ petition was taken up again for hearing after the fresh decision of the Appellate Authority. In fact, according to the enquiry officer also one out of the nine charges had been proved partly and that charge was of the petitioner wrongly claiming some halting allowance but the enquiry officer had found that he had rightly claimed that allowance.

13. I myself have also, in any case, gone through the enquiry record in order to find out whether the findings of the enquiry officer on the charges held to be fully proved by the enquiry officer were based on some evidence or not. Charges 1and 2 were that during the period of petitioner?s posting at Faridabad, Gurgaon and Palwal he was not residing there but was actually commuting everyday from Delhi to those cities of his posting since he had not left Delhi and he had not sought any permission from the competent authority to stay in Delhi while posted in these three places. The petitioner had denied that he had not moved from Delhi. To establish these charges the respondent bank had examined some witnesses from the banks branches at Faridabad, Gurgaon and Palwal who stated that the petitioner was commuting everyday from Delhi but none of those witnesses had claimed that they had actually seen the petitioner coming from

Delhi everyday for his duties and going back to Delhi after duty hours. If at all they were actually correct in their claim that the petitioner was commuting everyday from Delhi without permission and despite having been warned about that some action must have been taken against him but no such evidence was adduced by the bank. The respondent bank had sought to draw an inference to that effect from the fact that in the ration card of the petitioner made his residential address was of Delhi. No such inference could be drawn by any reasonable person that just because the petitioner?s ration card showed his address of Delhi he must actually be residing also in Delhi. He might not have got his name removed from his ration card after he was moved out of Delhi. His family might be drawing ration on the basis of that card but still it could not be said that the petitioner was not staying in his places of posting outside Delhi. Similarly just because he was getting some treatment from doctors in Delhi it could not be said that he was living in Delhi. The three places of his posting were quite near to Delhi and if he was coming to Delhi to show himself to doctors in Delhi in case of some ailment it could not be said that he committed any misconduct. The petitioner on the other hand examined a witness(DW-1) in defense who categorically had claimed in his evidence that he had been visiting the petitioner in connection with their trade union activities(the petitioner was undisputedly a trade unionist) and he used to stay with him in the houses where he was living in Faridabad, Gurgaon and Palwal. His evidence was rejected on totally flimsy ground that his statement was not convincing without stating as to why he was considered to be an unreliable witness. Therefore, charges No. 1 and 2 can be said to have been accepted by the enquiry officer, disciplinary authority and the appellate authority without any evidence at all having been adduced by the management and it cannot be said to be a case of insufficient evidence.

14. Charges No. 3 and 4 were to the effect that the petitioner had raised a claim for some allowance payable to those employees who are transferred from one city to another in the middle of academic session of the employee?s studying children and they are left behind by the employee for completing their ongoing session. According to the respondent bank the petitioner was not entitled to that allowance since he had not shifted his residence out of Delhi. For the reason due to which I have rejected the respondent?s case on charges 1 and 2 the findings of the enquiry officer in respect of these charges are also liable to be rejected. In any case, it was the petitioner?s claim that he was entitled to claim such an allowance as per the Rules and as per the respondent?s case he was not entitled to get the same and so it was not passed and was rejected by the Regional Office. Thus, by making a claim for some allowance which the petitioner considered he was entitled to get under the Rules, and which claim was rejected and no payment was made to him, he could not be said to have committed any misconduct. In case it is accepted that whenever any employee makes any claim for some financial benefits under the impression that he is entitled to get the same but the employer rejects the same on the ground that he is not entitled to get the same and then they are proceeded against departmentally for having

made those claims then many employees would become liable to be punished for misconduct. this Court is unable to accept that in such cases the employees could be said to have committed any misconduct.

15. So, charges 1 to 4 go. There was also a charge that when the petitioner had joined the bank in the year 1967 he had declared his place of domicile as Kanpur for the purpose of claiming Home Travel Concession for visiting his place of domicile and when he was promoted in the year 1977 he had changed his place of domicile to Delhi but still he in 1982 claimed that benefit by declaring his place of domicile as Kanpur and had obtained an advance payment of Rs.1500/-. The petitioner had admitted that he had taken that advance money by declaring his place of domicile to be Kanpur but he had also explained that when at the time of his promotion he had requested the bank for changing his place of domicile as Delhi as he was permanently resident of Delhi by that time and which change was permissible once during entire service tenure, but he had not receive any information from the bank that his request had been accepted and so he had shown his place of domicile as Kanpur in 1882 while claiming Home Travel Concession. In my view since the bank itself had made the advance payment to the petitioner despite the fact that in its records his place of domicile was shown as Delhi the petitioner could not be said to have committed any misconduct and if at all subsequently it was realized that he had wrongly been made advance payment the same could be deducted from his salary instead of proceeding against him in the year 1983 for his having committed misconduct. In fact, it is not undisputed that the amount of Rs.1500/- was recovered from the subsistence allowance which the petitioner was getting during his suspension after the bank had realized that the petitioner was not entitled to get that money. So, even that much loss also did not occur to the bank. Yet another innocuous charge was that the petitioner had once taken some advance of Rs.4000/- in 1982 under Leave Fare Concession facility for going to Puri but while submitting his bill he did not refund the excess amount which was less that Rs.100/-. The petitioner?s defense was that normally these type of adjustments were done by debiting the salary account of the employee and so that much amount could have been deducted from his salary. I am in agreement with the petitioner that he had could not be said to have committed any misconduct in that regard.

16. It is thus clear that all these stale charges were pressed into service by the bank only to show that the petitioner was habitual in committing acts of misconduct.

17. Now, I shall proceed to examine whether the finding of guilt arrived at by the enquiry officer in respect of charges 8 and 9 can be said to be perverse, as was the contention of the petitioner. In order to establish charges 8 and 9 the respondent bank had examined Mr. H.R. Magon, the Regional Manager with whom the petitioner had allegedly misbehaved and also Mr. J.C. Malhotra and Mr. M.L. Gauri with whom also he had misbehaved when they had tried to pacify him

when he was speaking rudely to Mr. Magon. Mr. Magon had stated before the enquiry officer about the petitioner using rude language with him on 8th June,1983. He narrated the exact words which the petitioned used for him that day and which had been stated in the charge sheet also. In cross-examination he had admitted that the incident of 8th June was the only incident when the petitioner had misbehaved like that. Other witnesses who had witnessed that incident had also supported Mr. Magon?s version before the enquiry officer.

18. As noticed already, the defense of the petitioner was that in fact on 8th June, 1983 when he had met Mr. Magon in connection with his overdue increment and had requested him to get that work done Mr. Magon had abused him and said to him "bahanchod, tu bara goonda banta hai.". The defense witness Mr. K.P. Arora(DW-1) had also deposed before the enquiry officer that he was present in the cabin of Mr. Magon at the time of the incident in question and at that time the petitioner had not misbehaved with Mr. Magon but in fact Mr. Magon had used abusive language with the petitioner.

19. A perusal of the enquiry report shows that the enquiry officer after simply narrating in great detail the statements of four management?s witnesses on these two charges and briefly referring to the statement of the petitioner and his defense witness Mr. K.P. Arora, who also claimed to be an eye witness of the incident, jumped to the conclusion that from the evidence of the management?s witnesses these charges stood proved. While accepting the evidence of the management?s witnesses and arriving at his conclusion in respect of charges 8 and 9 in favour of the management the enquiry officer had not said anything as to why he was not accepting the statement of the petitioner and particularly when it is undisputed that the incident of 8th June, 1983 was the only incident allegedly reported against the petitioner. It appears from the enquiry report that the petitioner was not even cross-examined on behalf of the respondent bank as otherwise the enquiry officer would have noticed that he was cross-examined by the presenting officer on behalf of the management. That was another fact which should have been considered by the enquiry officer. Even subsequent thereto also there was no incident of his having misbehaved with any other person of the bank was reported as also the fact that admittedly petitioner?s increment was overdue on 8th June, 1983. As far as the evidence of the defense witness Mr. K.P. Arora is concerned the same was brushed aside on a totally flimsy ground that none of the prosecution witnesses had claimed that at the time of the incident he was also present in the cabin of Mr. Magon. He could not be discredited because management?s witnesses did not notice his presence at the time of the incident. He could be discredited only in his cross-examination by showing that actually he was not present at the time of the incident. And as far as the Disciplinary Authority and the Appellate Authority are concerned, they did not even make any reference to the defense evidence while rejecting the grievance of the petitioner that his evidence had been rejected by the enquiry officer arbitrarily.

20. It is well settled that no employee can be punished only on the ipse digit of

the enquiry officer and he has to give reasons as to why he was preferring the evidence of the management over that adduced by the delinquent employee. For this view I find support from a judgment of the Supreme Court in the case of " Anil Kumar vs. Presiding Officer and an.", AIR 1885 S.C. 1121. The relevant observations of the Court are as under:-

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse Dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh, this Court reiterated that:-

satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.

(underlining is mine)

21. Therefore, the findings of the enquiry officer as well as the Appellate Authority in respect of the charges leveled against the petitioner in the present case also having been arrived at by totally ignoring the statement of the petitioner and his defense witness Mr. K.P. Arora cannot be sustained at all and with this conclusion the very foundation of the respondent?s case gets totally cracked and the entire disciplinary proceedings get vitiated.

22. There is no doubt that in some of the judgments cited by the Learned Counsel for the respondent bank it had been observed by the Supreme Court that when an employee uses foul language with his superior that is a very serious thing. But then there are cases in which the Supreme Court had also found the extreme punishment of removal/dismissal to be unjustified even when much more rude language was attributed to the delinquent employee. In "Rama Kant Misra vs. State of Uttar Pradesh", 1983 SC (1) 648 the concerned delinquent employee had been dismissed from service for his having used threatening language with his superior and the punishment of his dismissal from service was set aside. The relevant paras from the said judgment are re-produced below:

The specific allegation is that on November 18, 1971, around 2.50 p.m. appellant was complaining about the deduction that was being made from his wages for his absence from the place of work and late attendance with Shri Mahendra Singh. When Shri Mahendra Singh replied that he had no separate rules for him, the appellant is alleged to have lost his balance. The threatening language alleged to have been used by the appellant when freely translated reads:

Are other persons your father. I will make you forget your high handedness either here or somewhere else. An officer of yesterday''s making discloses power consciousness.

What has happened here? The appellant was employed since 1957. The alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 18, 1971, meaning thereby that he had put in 14 years of service. Appellant was Secretary of the workmen''s Union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years'' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere. Unfortunately, the Labour Court has completely misdirected itself by looking at the dates contrary to record and has landed itself in an unsustainable order. Therefore, we are required to interfere.

23. In "Ved Prakash Gupta vs. Delton Cable India (P) Ltd.", 1984 SCC II 569 the concerned delinquent employee was proceeded against departmentally for having used filthy language with his superior and the relevant observations of the Apex Court are as follows:

The charge framed against the appellant was as follows:

You were on duty on 31.7. 1979 and 1.8.1979 from 8 a.m. to 4 p.m. It was reported against you as under:

On 31.7.1979 a person from M/s. Gurumukh Dass (building material supplier) came to IMI department with two copies of challan No. 105 dated 15.7.1979 for obtaining the signature of the person concerned in token of having received 2000 bricks. The copies of the challan were having the gate entry. Shri Durg Singh on instructions of Mr. S.K. Bagga, junior Engineer, went to the gate for confirming whether the bricks have been received in the factory premises as per the challan. It was found that the gate entry for the supply of 2000 bricks as per the challan aforesaid had been A cancelled ill the gate register. You, however, took the challan (both copies) from Shri Durg Singh and cancelled the gate entry from the challan and returned both the copies to the person of M/s. Gurumukh Dass. That on 1.8.1979 as per the instructions of IMI department one Mr. Hira Lal, the worker of IMI department was sent to the gate office in connection with a challan of a water pump. As the worker i.e. said Mr. Hira Lal did not come back to IMI department for quite some time Mr. S.K. Bagga, Junior Engineer of IMI department personally went to the gate office. He (S.K. Bagga) apprised Mr. Deep Chand Senior Security officer of the irresponsible manner in which you delivered the challan to the person of M/s. Gurumukh Dass instead of to IMI department. When Mr. Deep Chand further verified this fact from you showed ignorance and demanded to know the name of the person who had said so. When informed that it was Durg Singh you without any rhyme and reason or provocation abused Shri Durg Singh in a filthy manner saying (translated in English as I fuck the mother of Durg Singh; bring him). You were advised that being a responsible employee and that too belonging to the security department you should not abuse any employee but you continued in hot temper and demanded Mr. Durg Singh to be called in the gate office. When Shri Durg Singh was brought in your presence he once again confirmed and reiterated that you had given the challan to the person of M/s, Gurumukh Dass you lost all your senses and started abusing Shri S.K. Bagga left and right in a filthy, derogatory and abusive manner. You said (translated in English as you should try hard to your gandh; you cannot do anything wrong to me. You may go to Ram Kumar or you may go to Vijay Kumar). The above conduct of yours is gross misconduct as you have lost the basic courtesy which you were supposed to extend to the employees as a responsible member of the security staff. The charges if proved will result in total loss of confidence in you.

24. However, in view of my conclusions already arrived at in respect of the various charges I am not going into the question whether this Court would have maintained the punishment awarded to the petitioner if the charges had been found to have been established keeping in view the judgments cited by the Learned Counsel for the respondent bank or still the punishment would have been found to be unjustified in view of the above noted two decisions of the Supreme Court in which charges were of using filthy language by the delinquent employee. The upshot of the afore-said discussion and conclusions arrived at by me is that the punishment of removal from service awarded to the petitioner by the respondent bank cannot be sustained at all. This writ petition is accordingly allowed and the petitioner stands exonerated of all the charges of misconduct. Resultantly, the petitioner has become entitled to get all the consequential service benefits which he would have got had he not been illegally removed from service. Since he has already attained the age of superannuation he is not ordered to be reinstated in service.

