
(2011) 07 MP CK 0050
In the Madhya Pradesh High Court
Case No : W.A. No. 612 of 2007

Pramod Dhanodkar

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Citation : (2011) CriLJ 631 : (2011) 4 MPHT 332

Hon'ble Judges : S.R. Alam, C.J;K.K. Lahoti, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Krishn Kumar Lahoti, J.—This appeal is directed u/s 2(1) of M.P. Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 assailing judgment dated 5.9.2007 by the Single Bench in W.P. No. 1615/2000. The Appellant had challenged order dated 21.3.1998 Annexure P-20 before the Writ Court by which Petitioner was found guilty in departmental inquiry and compulsorily retired from service; the appellate order dated 16.11.1998 Annexure P-22, by which the punishment was modified by the appellate authority. The learned Single Judge dismissed the writ petition filed by the Appellant under Article 226/227 of the Constitution of India, holding that the appellate authority had considered the quantum of punishment, modified it and in such circumstances, it would not be appropriate to interfere in the writ jurisdiction.

2. Before considering the contentions of parties it would be appropriate if factual position in the case is stated in brief.

The Petitioner was working as Senior Manager, MM Grade III scale with the Respondents and was appointed as District Coordinator at District Coordinator Office of Respondents Punjab National Bank in its Chhindwara branch. The Petitioner joined his duty on 10.6.1997 at Chhindwara. The Petitioner's sitting in the office was near toilet and as per the Petitioner it was a dirty, damp and

unhygienic place. The Petitioner had made various representations/complaints to the Regional Manager of the Bank and also made a request for arranging an alternative and suitable accommodation. The Petitioner, being a senior officer of the Respondent/Bank, on the basis of Power of Attorney, Annexure P-9 executed by the Bank in his favour, had hired another office premises, suitable to the office. The Petitioner after settling the accommodation, shifted the office on 14.6.1997, after working hours of the day and the office was to be reopened at a new place on 16.6.1997 at 10 A.M. On 14.6.1997 the Bank Manager Shri S.K. Upadhyay had communicated about the lease obtained by the Appellant and shifting of office to another place to the Regional Manager at Jabalpur. On 16.6.1997 the Branch Manager as per the instructions received from Regional Manager had communicated to the Appellant at 7 a.m. that the Appellant should not shift the office without the written permission of Regional Manager. The Petitioner who had already shifted the accommodation on 14.6.1997 had intimated in writing to the Regional Manager, Jabalpur about his shifting of office temporarily subject to final arrangement by the Higher authorities in due course of time. An amount of Rs. 900/-p.m., rent was settled by the Petitioner for the new accommodation. On 16.6.1997 itself, the Regional Manager had suspended Petitioner in respect of his conduct of shifting of office without seeking prior permission and D.E., was initiated against the Petitioner.

3. In the Departmental Enquiry the Petitioner had not disputed the aforesaid fact of shifting of the office, but justified his action. The enquiry officer found that without seeking prior permission of the Regional Manager shifting was not permissible and submitted his report to the Disciplinary authority. The Disciplinary authority, after following due procedure, by issuing of show cause notice, had imposed a punishment of compulsory retirement on the Petitioner. The Petitioner had assailed the order of Disciplinary Authority before the appellate authority. The Appellate Authority considering the peculiar facts modified the order of compulsory retirement, but passed an order of major punishment against the Petitioner, which reads thus:

However, taking in view the circumstances of the case, I am of the opinion that ends of justice would be met by modifying the penalty of "Compulsory Retirement from Bank's Service" imposed upon him by the Disciplinary Authority to major penalty of "Reduction of salary to two stages lower in the time scale of pay for a period of three years with further directions that he will not earn increments of pay during the period of such reduction and on expire of such period the reduction will have the effect of postponing the future increments of his pay." The intervening period from his compulsory retirement till his reinstatement would be considered as extraordinary leave (sick leave) on loss of pay which would count as service for all purposes including pension. Further, as ordered by the Disciplinary Authority, no salary will be payable to Shri Dhanodkar for the period of his suspension except the subsistence allowance already paid to him.

This order was assailed before the learned Single Judge. The learned Single Judge considering the facts of the case has refused to interfere in the matter, aggrieved by which this appeal has been preferred.

4. The learned Counsel appearing for Appellant tried to justify his action of shifting the office on the ground that various letters were sent by the Appellant in this regard and then he had shifted office to new place in a compelling circumstances. Earlier office was at a dirty place, foul smelling was continuously persisting, unhygienic for occupation and use, and in this regard he has referred various letters filed as Annexure P-2 (cumulatively) showing that there was justification in respect of shifting of office on the basis of Power of Attorney executed in his favour. The Appellant has also referred document Annexure P-7, the letter sent by the Civil Surgeon, who had visited the office premises on 12.7.1997 and had expressed his opinion in Annexure P-8 as under:

I am of the opinion that the space and accommodation & environment provided to your office are detrimental to the health of a common man, and no more suitable for the working of an office, from the hygienic point of view.

It appears that after getting such opinion of Civil Surgeon, the Petitioner on the strength of Power of attorney Annexure P-9 had taken another accommodation on lease for the use and occupation of office and shifted it on 14.6.1997. However before actually commencement of work on 16.6.1997 Petitioner was placed under suspension and office was re-shifted in earlier accommodation. In this regard it is not disputed before us that the Power of Attorney executed in favour of Appellant, was not empowering the Appellant for obtaining another accommodation for office without seeking prior permission of the Regional Manager. It is also not in dispute that the accommodation was shifted without obtaining prior permission of the Regional Manager. That on 14.6.1997 after office hours the office was shifted to new premises and it was to be reopened on 16.6.1997, but before the office could commence its working on that day, the Appellant was placed under suspension and Departmental Enquiry was initiated against the Appellant.

5. From the perusal of enquiry report, it appears that against the Appellant charges No. 1, 2, 3(b) were found proved and charge No. 3(a) was not proved. In short the charges against the Appellant were as under:

1. Shri Dhanodkar unauthorisedly shifted District Coordinator's Office from branch premises BO: Chhindwara to 45, Vivekanand Colony, Chhindwara and started functioning there w.e.f. 16.6.97. As per General Services Administration Division, HO: New Delhi Circular No. 03/95 dated 24.07.95 the powers for hiring of office premises on rent/ lease basis falls within the powers of the Regional Manager and above. Shri Dhanodkar also shifted the records of the D.C. Office alongwith SFF items to the above said unauthorised/ unapproved place/premises.

2. As soon as the aforesaid unauthorised act on the part of Shri Dhanodkar came to the notice of the Regional Manager, Jabalpur, he advised Shri S.K. Upadhyay,

Manager, BO: Chhindwara to immediately contact Shri Dhanodkar and convey him not to shift/start functioning of the DC office: Chhindwara from unauthorised/unapproved place. Shri Upadhyay conveyed the instructions of Regional Manager, Jabalpur to Shri Dhanodkar in writing at 07.30 am on 16.06.97. Despite receipt of the above instructions of the Regional Manager, Jabalpur through Shri S.K. Upadhyay, Manager, BO: Chhindwara, Shri Dhanodkar shifted/started functioning of the DC office: Chhindwara from the above mentioned unauthorised place/premises, i.e. 45, Vivekanand Colony, Chhindwara, w.e.f. 16.06.97 disregarding/disobeying lawful instructions of higher authorities.

3(a) Shri Dhanodkar even before obtaining offer letter from the owner of the said premises, i.e. 45, Vivekanand Colony, Chhindwara, informed about the proposed shifting/ functioning of DC Office: Chhindwara w.e.f. 16.06.97 to various Government Offices and branches of his command area. However, the letter of offer from Smt. Sandhya Varma, the owner of the said premises at 45, Vivekanand colony was obtained by Shri Dhanodkar on 13.06.97.

3(b) Shri Dhanodkar also sent the information about shifting of the DC Office: Chhindwara to the press which was later on got stopped from publishing.

The charge No. 3(a) which was not found proved was in respect of informing of shifting of premises of District Office Chhindwara to various Government offices and branches of his command area. So far as other charges are concerned they were found proved. Though the Appellant tried to convince us that even the aforesaid charges were not proved, but looking to the findings recorded by the Disciplinary authority, the Appellate Authority and the learned Judge, we do not find any merit in the contention that the aforesaid charges were not proved. Apart from this, shifting of premises on 14.6.1997 after office hours, and its scheduled opening on 16.6.1997 was not in dispute.

6. The only question which remains for our consideration is whether the punishment imposed on the Appellant was commensurate to the charges levelled against the Appellant. In this regard it would be appropriate if certain documents referred by the enquiry officer are quoted, which reads as under:

(a) DE-1 Letter dated 05.8.85 from R.M. Jabalpur to D.C. Chhindwara wherein the then D.C., was advised to submit the viable/ suitable proposal to his office due to Inadequacy of space.

(b) DE-2 Letter No. DC/BP/89 dated 23.2.89 from DCOW.A. No. 612/2007 Pramod Dhanodkar v. Punjab National Bank and Ors. Chhindwara to R.M. Jabalpur stating therein that the R.M. had looked the conditions of D.C.O. Room in the branch and agreed to their views on unhygienic and inadequate accommodation, suggested to search for a alternate accommodation. He further informed that due to dispute by the landlords for obtaining no objection before the lease period, it may take some more time & emphasising the need to permit two room accommodation for DC office in view of unsuitability of existing premises.

(c) DE-3 Letter No. 1319 Dt.05.11.88 from D.C. Chhindwara to R.M. Jabalpur conveying that:

- The DCO is working in the last room of Bank premises of Chhindwara branch since Oct '87.

- It is situated in front of Lavatory and Latrine of Branch due to which there remains full of unbearable odd smell.

- There is no cross ventilation.

- In the rainy season water reaches in the room, wetness and slum (slum) in the walls.

- In winter it is too cool due to dampness.

- We fear due to this atmosphere somebody may not capture some - serious disease.

(d) DE-4, Letter for Naya Bank Bhawan dated 31.7.94 from D.O. Chhindwara to R.M. Jabalpur stating that:

- Space for the Bank is inadequate and proposal for new premises is pending with RMO Jabalpur for last three years with no progress therein.

- Existing room provided to DCO Chhindwara be vacated and shifted to separate premises.

(e) DE-5 Letter dated 01.8.87 from D.C.O. Chhindwara to R.M. Jabalpur - conveying that:

- Present space within the Bank is inadequate for functioning of our Office.

- There is no natural light, no proper ventilation, only one room of 10" x 10" is allotted to this office which is quite -inadequate.

(f) DE-6, GAD circular No. 1/97 dated 23.6.97 to all officer stressing the need for upkeep and maintenance of premises viz--Adequacy of space.

- Premises should be safe.

- Premises should have all civic and other facilities like -natural light, ventilation etc.

- should have sufficient frontage.

- Must contain all reasonable amenities and conveniences.

- There should be proper provision for sitting arrangements for customers.

(g) DE-7 & 8 are Sketch maps of Bank premises from which it can be seen that a room of 10" x 14" was provided to DC office. All the three toilets are situated very much in front of with opening face towards DC room with all sort of odd smell and creating - unhygienic conditions.

(h) DC and 4 other members of staff with SFF are to be housed in this room.

(i) DE-14, A letter of representation dated 10.6.97 from staff members working at D.C.O. Chhindwara wherein it was complained that:

- Walls of DCO always remains full of dampness.

- Due to lavatory situated facing towards DCO, unbearable odd smell always remains in the office.

- There is no cross ventilation.

- Office remains full of mosquitoes and cockroaches.

- No officer made sincere efforts towards shifting of D Office to suitable place.

- Shri A.P. Dubey, Asstt Manager is chronic patient.

- Shri Chandravanshi already undergone open heart surgery who needs not only adequate but fresh oxygen.

(j) DE-15, Certificate dated 12.6.97 issued by Civil Surgeon, Chhindwara that " That the space & accommodation and environment provided to your office are detrimental to the health of a common man and no more suitable for working of an office, from Hygienic point of view."

(k) DE-12 are the minutes of Zonal Building Committee approving the proposal for alternate building premises including DC office.

7. Apart from the above documents the Appellant relied upon the following deposition of witnesses from the enquiry report:

(i) DEPOSITION OF MW-1 (Proceeding at page 18)

DC office is situated in the back side of Bank's premises of B.O. Chhindwara in a room of approximately 10" x 14" size with 4 staff members, a permanent DC, and having 3 almira, 2 stationery racks, 2 tables and 4 to 5 chairs.

(ii) DEPOSITION OF DW1 (Proceedings at page No. 22 of EP)

Shri Dubey was transferred to DCO, Chhindwara on medical ground -having ailment of Enzima, diabetes mellitus. His posting was -considered on the health grounds by RMO, Jabalpur only after examination and certification by medical Board.

(iii) PROCEEDINGS AT PAGE 23

DW-1 further stated in proceedings at page No. 23 that the space-provided to DCO was/is not sufficient considering the SFF items. The staff had given thereat. Further he -added that

- Walls are always with dampness.

- during the rainy season the floor remains flooded with water.

-due to dampness oxygen availability remains lower and they have to go out for breathing.

-Termite and mosquitoes problems continues.

-The lavatory and urinals are facing to DC office which gives bad smell all the times which makes difficult to sit in the-office space.

-ventilation was insufficient.

Earlier the problems were raised before the previous DC who did not take any interest in solving the problems.

(iv) PROCEEDINGS AT PAGE 26

Since the proceedings were conducted in the DCO room DW-1 confirmed in re-examination that only one person was working and 4 were sitting. The atmosphere of room was not conducive, we were feeling bad smell dampness and deficiency of oxygen.

(v) DEPOSITION OF DW-2 (Proceedings at page 28)

-Shri Chandravanshi confirmed that he had undergone open heart-surgeries for two times. Doctors advised him to observe the open atmosphere with conduciveness but the atmosphere of DCO was/is not conducive because there is always bad smell from adjacent lavatory which creates headache, giddiness and breathing problems which is harmful to his health and against the advise of the Doctor. To overcome this problem, he was given a seat in branch premises at the entrance. He submitted the letter dt.10.6.97 (DE-14) to CSO alongwith the other members of staff at DCO, Chhindwara and confirm the contents thereof.

Proceedings at page 29

-Further Shri. Chandravanshi stated that if he is compelled to sit in DCO room, he will sit but it will result the breathing problem and headache and it is harmful to health and life. He also deposed in cross examination by P.O. that his seating arrangements is made at the entrance of the branch not in DCO office. Once he was sitting in DC office, he felt giddiness and immediately went out of DCO room in the open space.

(vi) DEPOSITION OF DW-3 (PROCEEDINGS AT PAGE 30)

Smt. Kushima Kurveti confirm that it was difficult to work and sit in DC office room from 10.30 to 5.30 owing to winter/coldness which resulted illness. During rainy season the floor is flooded with water bad odour was coming from lavatory situated opposite DC office, which spoiled the atmosphere and owing to these problems she sought transfer from DC office to branch which was duly considered by the R.M., Jabalpur.

(vii) DEPOSITION OF DW-4 (Proceedings at page 30)

Dr. N.K. Parashar, Civil Surgeon cum Supdt of Distt Hospital, Chhindwara confirms the certificate dated 12.6.97 (DE-15) and stated that he -visited to the premises in official capacity and only after visit issued certificate.

8. The enquiry officer on the basis of aforesaid material recorded his finding as under:

The entire defence is based on the paucity of space for DC office, unhygienic conditions of DC room and unsuitable atmosphere of the DC Office, but no where it could be satisfied that there were the circumstances to shift the office, records SFF and staff immediately even without the approval of the competent authority. More over the DC-Office had been functioning from the same room since inception i.e. 1985 and since then 5 more D Cs have worked (proceedings page 25). Though the Bank is required to consider the problems of its employee on compassionate grounds but not obliged to accommodate and consider the problems immediately violating the rules. The action of the CSO was not in terms of instructions/guidelines.

In fact, what is narrated by the defence is IRRELEVANT and have not touched the material point of charge about disobeying/ disregarding the lawful instructions. Perhaps the defence wanted to prove that the act was corroborated by some one but this again can not be taken any cognizance of as the CSO is a seasoned person with sufficient experience and was competent to take the prudent decision.

9. From the perusal of aforesaid, it is apparent that the office of Appellant in the premises was not located at a hygienic place. It was a place where continuous dampness and foul smell were persisting, and in the rainy season floor also remained damp. The lavatory and urinals were facing to the office of Appellant and foul and bad smell was continuously coming to the office of Appellant. Apart from this ventilation in the office was insufficient.

10. Though as per rules and procedure the Appellant was not entitled to shift the office without seeking prior approval from the competent authority and was not entitled to shift the office on the basis of Power of Attorney, but one aspect which requires consideration is humanitarian aspect of aforesaid problem. It is not a case where the conduct of Appellant was of dishonest, malafide or it was a grave case where forgery, fraud misappropriation etc., were found, which circumstances could warrant for a major punishment. The Appellant was continuously drawing the attention of the authority in respect of his and staffs genuine difficulty and was pressing his request to the authorities to permit him to shift the office, but it appears that the grievance of Appellant was not redressed by taking a quick, justified, humanitarian and sympathetic action in the matter and Appellant was compelled to continue at the same place and to discharge his duties from the office which was unhygienic and unfit for human habitation. Though in the case, the appellate authority has taken a lenient view and in place of major punishment of compulsory retirement reduced the punishment as

quoted hereinabove, but still it appears that humanitarian and factual aspects were not taken into consideration while imposing the punishment on the Appellant.

11. The Apex Court in *Ran Singh Vs. State of Haryana and Others*, held that the punishment imposed by the Disciplinary Authority should not normally be interfered with by the High Court, except in appropriate cases by weighing all factors like nature of charges proved against, the past conduct, penalty imposed earlier, nature of duties assigned, having due regard to their sensitiveness, discipline required to be maintained and the department/establishment where the delinquent works. The Apex Court in *Syed Zaheer Hussain Vs. Union of India (UOI) and Others*, found that the punishment of dismissal was harsh where the employee was on unauthorised absence for seven days. In *Ram Autar Singh Vs. State Public Service Tribunal and Others*, the Apex Court found that the dismissal of Police constable on the ground that he remained on hunger strike for one day in protest against the transfer was held to be disproportionate.

The punishment of penalty to be imposed must commensurate with the gravity of misconduct. Although the choice and quantum of punishment is within the jurisdiction and discretion of the authorities, yet it must suit the mis-conduct and it should not be unduly harsh. If it is so disproportionate shocking the conscience of the Court, it can be interfered in writ jurisdiction.

12. In this regard the facts of the present case are relevant. It is not in dispute that the place where the Appellant was sitting was unhygienic, not suitable to run the office, foul smelling was continuously persisting. There was continuous dampness in the office and in fact there was no atmosphere to run an office. Continuous efforts were made and all the authorities were convinced that the aforesaid position is persisting but in spite of this, office was not shifted. Apart from this, 3 toilets were just in front of the DC room and all sorts of odd smell was persisting. In these compelling circumstances if the Appellant took a decision to shift the office and by mis-interpreting power of attorney, exercised such power and though the office was shifted but it could not make functional because of objection of the higher authorities. In these circumstances, if a minor punishment is imposed on the Appellant that will meet the ends of justice. Apart from this, it is stated at the Bar that the Appellant has now retired but because of punishment imposed by the appellate Authority, he has suffered a financial loss of near about Rs. 6 lacs.

The DCO office is a public office and the public was continuously visiting the office. The Appellant who was the Senior Manager MM Grade-III Scale and was appointed as District Coordinator at District Coordinator office at Chhindwara Branch, was also under an obligation to provide a congenial and healthy atmosphere for the office. It was also his duty that the subordinates working in the office should get the same. He was continuously making the efforts and his efforts were not without any basis. In this regard the correspondence which has been referred in para 6 and relevant evidence referred in para 7 of this order

reveals that all the higher officers of the Bank were of the opinion that the aforesaid DC office was unsuitable and was required to be shifted at a proper place. In these circumstances, if the Appellant by over enthusiasm or because of the circumstances prevailing at the relevant time shifted the office, then it cannot be said to be a malafide act on the part of Appellant. For shifting of the office no pecuniary loss was caused to the Respondents except for payment of Rs. 900/- of one month's rent in advance. Though the office was shifted in the evening on 14.6.1997, but before commencement of work on Monday i.e. 16.6.1997 at 10.00 a.m., the Appellant was suspended and the office continued at the same place where it was earlier continued. The nature of post held by the Appellant was of responsibility. He was the District Coordinator of the office and apart from the powers enjoyed by the Appellant, he was also under an obligation to provide adequate atmosphere in the office. In these circumstances, the punishment imposed by the appellate authority appears to be disproportionate shocking the conscience of this Court. In our opinion though the Appellant ought to have taken aforesaid decision after obtaining due permission/sanction from the competent authority, without which he ought not to have shifted the office, but even then we do not find any malafide or high-handedness in the aforesaid decision of Appellant.

The entire intention of the Appellant was to shift the office at a place having healthy and ventilated atmosphere from the place which was totally unhygienic and unsuitable to the office as was found by various authorities, which we have referred in paras 6 and 7 of the order. In these circumstances, the punishment awarded to the Appellant is shocking our conscience and we find that the punishment is disproportionate to the mis-conduct as finds proved in the matter. Apart from this, the Appellant has already retired from service. No material is brought to our notice that the past conduct of Appellant was blemish or during his tenure he ever was found guilty of any mis-conduct. It was the first mis-conduct on the part of Appellant, for which a lower punishment in comparison to the punishment awarded by the appellate authority deserves to be imposed.

13. Learned Counsel for Petitioner has drawn our attention to para (L) of the General Power of Attorney Annexure P-9 and submitted that on the strength of this clause in General Power of Attorney, Petitioner was authorised to take office premises on lease on behalf of the Bank and to execute necessary lease deed in favour of landlord, which aspect has not been considered by any of the authority. He has also drawn our attention to Annexure P-17 a circular of Respondent/Bank dated 8.4.1996, which provides that where any officer had exceeded his delegated powers, then he can explain the compelling circumstances necessitating such action beyond his powers and reasons as to why it was not possible to him to have prior approval from the competent authority. He has also stated that human rights of the Petitioner were violated for compelling him to work in inhabitable condition and it was infringement of Article 21 of the Constitution of India. For this, he has placed reliance to the Apex Court judgment in Consumer Education and Research center and others Vs. Union of India and

others, Stating aforesaid, it was submitted that these aspects were not considered by the Disciplinary Authority and Appellate Authority while deciding the matter and awarding punishment in the matter.

Shri Khare, learned Counsel appearing for Respondents also submitted that the aforesaid General Power of Attorney, though provides for taking premises on lease and for execution of lease deed, but it pre-supposes sanction from higher authority, without which the Petitioner was not entitled to take the premises on lease. It is also submitted by him that after modifying the punishment by the appellate authority, Petitioner has accepted the punishment, joined the duties and thereafter took voluntary retirement, so now the Petitioner cannot challenge the order of punishment. He has placed reliance to the judgment of Apex Court in State of Punjab and others Vs. Krishan Niwas, and Punjab State Civil Supplies Corporation Ltd. Chandigarh and others Vs. Narinder Singh Nirdosh,

We have perused the aforesaid documents and are of the view that all these aspects can be considered by the appellate authority, as we are of the view that the matter deserves to be remanded back for consideration by the Appellate authority in respect of quantum of punishment. The appellate authority shall consider the effect, in particular para (L) of the General Power of Attorney, executed in favour of Petitioner. The appellate authority shall also consider the humanitarian aspect of the matter as stated by the Petitioner during the course of hearing. So far as contention of Respondent that after acceptance of punishment order, Petitioner cannot challenge the punishment order is concerned, suffice it to say that the right of Petitioner to challenge the proceedings and punishment order was never foregone by him. Apart from this, the judgments of the Apex Court cited by the learned Counsel for Respondents relates to the cases, in which offence relating to moral turpitude was involved, which is not case herein. Anyhow the appellate authority while considering the matter shall also consider all these aspects.

14. In Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, , the punishment awarded to a Bank Manager against whom charge of procedural irregularity in advancing small loans was under consideration before the Apex Court. The Apex Court found that all the relevant factors were not taken note of, which has some bearing on the quantum of punishment, the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. In that case it was contended on behalf of the Appellant delinquent officer before the Apex Court that there was no occasion in the long past service indicating either irregularity or misconduct of the Appellant, except the charges which were the subject matter of departmental enquiry of subject in question. The stand of the Appellant was that though small advances may have become irrecoverable, there was nothing to indicate that the Appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank, that can be recovered from the Appellant. In that case it was a loss of Rs. 46,000/-. From the perusal of various articles of charges

got to show that there was some procedural irregularity, which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service. The Apex Court found that these aspects were not considered by the High Court in the proper perspective. The High Court had not gone into the question as to whether the order of removal of the Appellant from service was grossly disproportionate. In the fitness of things, the High Court was directed to examine these aspects afresh. In that case Appellant was superannuated in the normal course and the matter remained pending for a long time. The aforesaid judgment is fully applicable in the facts of present case.

15. In the present case the DC office was shifted by the Appellant without seeking permission of higher authorities, though higher authorities already had expressed their opinion in respect of approval of aforesaid proposal. In the compelling circumstances or in the larger official interest Appellant had shifted the office, which cannot be said to be an act of fraud or mis-appropriation of money or any serious mis-conduct. It was only an over enthusiasm or exceeding the powers by the Appellant and apparently there was no serious financial loss to the Respondent/Bank. The appellate authority may also consider to recover the financial loss, which was caused because of shifting of office, which had never become functional. However it is for the appellate authority to decide and for this purpose, we find it appropriate to remand the matter to the appellate authority.

Hence, in the interest of justice, we find it appropriate to remit the matter to the appellate authority to re-consider the quantum of punishment in the light of aforesaid peculiar facts. The appellate authority shall now re-consider the quantum of punishment and pass a fresh order taking into consideration all the facts sympathetically.

In view of the aforesaid, this appeal is allowed in part. The matter is remanded back to the appellate authority with a limited direction to pass a fresh order of lesser punishment in accordance with law. No order as to costs.