

(2013) 11 DEL CK 0012

In the Delhi High Court

Case No : LPA 747 of 2012 and CM No. 19152 of 2012

State Bank of India

APPELLANT

Vs

Sh. P.N. Saluja

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 11 DEL CK 0012

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sudhir Nandrajog with Mr. Rajiv Kapur and Ms. Vatsala Rai, for the Appellant;

Final Decision : Disposed Off

Judgement

Vibhu Bakhru, J

1. The appellant has preferred the present appeal impugning the order dated 10.09.2012 passed by a learned Single Judge of this court in WP (C) No. 1300/1988 (hereinafter referred to as the "impugned order") the learned Single Judge has allowed the said writ petition filed by the respondent and set aside the order dated 25.05.2011 passed by the Appellate Committee of the appellant. The said Appellate Committee had by the order dated 25.05.2011 rejected the appeal preferred by the respondent against his removal from service of the appellant bank on account of his alleged misconduct. The facts relevant for examining the controversy in the present appeal are briefly stated as under.

2. The Respondent was employed with the appellant and was posted as a clerk in Varanasi in the year 1967. In 1970, the respondent was transferred to Kanpur and in 1971 was again transferred to Delhi. In the year 1977, the respondent was promoted as an Officer and in September 1980, the respondent was transferred to Firozpur Jhirka where he did not join. The appellant issued a fresh transfer order transferring him to Gurgaon where the respondent joined in

November 1980. The respondent was again transferred to Palwal sometime in 1981 and finally he was transferred to Faridabad in the year 1982.

3. On 08.06.1983, the respondent went to the Regional office of the appellant in Delhi and met the Regional Manager to inquire about the increment which was long overdue. In that meeting, the respondent allegedly misbehaved with the Regional Manager. The respondent was suspended from service pending an enquiry relating to the incident of 08.06.1983.

4. On 26.10.1983, the respondent was served with a charge-sheet whereby nine charges of misconduct were leveled against the respondent. Whereas seven charges related to other allegations including making wrongful claims to certain allowances, the other two articles of charge related to the incident of 08.06.1983. Essentially, the charges leveled against the respondent were indecent behavior within the premises of the bank, leaving the station of posting without obtaining prior permission and for claiming Transfer Allowance and Mid-Academic Transfer Allowance to which the respondent was allegedly not entitled. The relevant content of the charges leveled against the respondent are as under:-

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 unauthorisedly 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 16.06.1982 to 30.06.1982 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 JMGS-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 borrowers accounts out of 631. He against his halting allowance for which he would be entitled for taking over charge of the Field Officers' duties. Instead of submitting any T.A. Bill, he again requested the Branch Manager on the 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 unauthorisedly 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 travelling expenses from R.K. Puram (New Delhi) to Palwal, whereas he should have claimed the amount 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 travelling 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, unauthorisedly 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 JMGS-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 increments) 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 RM 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 poochnay 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.

5. The respondent submitted a reply to the charge-sheet on 19.07.1984 wherein he refuted all the said charges. The relevant extract from the reply to the said charge-sheet is as under:-

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 Rs. 715/- on my transfer from Connaught 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 unauthorizedly credited my own S/B A/C maintained at Sarai Khawaja Branch with sum of Rs. 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.

6. The Inquiring Authority conducted the enquiry proceedings and by the order dated 08.05.1958 held that out of nine articles of charges eight charges (Charge nos. 1 to 5 and 7 to 9) stood proved and one charge (Charge no. 6) was partly proved. The Disciplinary Authority adopted the findings of the Inquiring Authority and by an order dated 24.06.1985, imposed the penalty of removal of respondent from service in terms of Rule 49(g) of State Bank of India (Supervising Staff) Service Rules. Aggrieved with the aforesaid penalty, the respondent preferred a Departmental Appeal before the Appellate Authority i.e. the Local Board and the same was dismissed on 21.11.1985.

7. The respondent then filed an writ petition being W.P. (C) No. 1300/1988 before this court 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 said writ petition, one of the grounds taken by the petitioner for claiming these reliefs was that the Appellate Authority had not passed a reasoned order while dismissing his appeal against the order of the Disciplinary Authority. A learned Single Judge of this Court disposed of the writ petition, by an order dated 13.01.2011, and remanded the matter to the Appellate Authority for passing a fresh reasoned order in respect of the respondent's appeal.

8. The Appellate Committee passed a reasoned order dated 25.05.2011, pursuant to the directions contained in the order dated 13.01.2011, whereby the Appellate Committee rejected all the contentions of the respondent and upheld the decision of the Disciplinary Authority.

9. Subsequent to order dated 25.05.2011 passed by the Appellate Committee), the respondent filed a Review Petition No. 380/2011 praying for the review of the judgment dated 13.01.2011 in the light of non-consideration of grounds of the appeal by the Appellate Committee. The appellant challenged the maintainability of the said review petition and contended that the Order of the Disciplinary

Authority stood merged with the order of the Appellate Committee and in the event the respondent was aggrieved by the Appellate Order he could file a fresh writ petition. It was contended that the respondent could not agitate his grievance by filing a review petition as the order of the Appellate Committee was not a subject matter of the writ petition. This contention was rejected by the learned Single Judge and the review petition was allowed by an order dated 27.01.2012. The learned Single Judge while dismissing the said objection of the appellant held that even though the respondent had described his application as a review application, he was in fact seeking disposal of the writ petition on merits. The review petition was disposed of and the writ petition was taken up on board for fresh consideration.

10. Aggrieved by the order dated 27.01.2012, the appellant filed an intra court appeal being LPA No. 159/2012 and the same was dismissed by the Division Bench of this court on 27.02.2012. The said order was challenged before the Supreme Court in SLP No. 15672/2012 which was also dismissed by the Supreme Court on 01.07.2013. In the meantime, the learned Single Judge passed the impugned order dated 10.09.2012, whereby the writ petition filed by the respondent was allowed and the order removing the respondent from service was quashed. The respondent was held entitled to get all the consequential benefits.

11. We have heard the learned counsel for the appellant and the respondent in person at length.

12. We may at the outset observe that the appellant has not challenged the findings of the learned Single Judge on merits and no arguments have been advanced assailing the correctness of the conclusions arrived at by the learned Single Judge on merits of the charges leveled against the respondent. The focus of the appellant, in the present appeal, has been to assail the decision of the learned Single Judge essentially on two grounds namely that the order of the Appeal Authority which has been passed by the Appellate Authority pursuant to the order dated 13.01.2011 passed by the learned Single Judge was not a subject matter of the writ petition and consequently, impugned order passed by the learned Single Judge was beyond the pleadings. The second ground canvassed on behalf of the appellant was that the learned Single Judge could not re-appreciate and reexamine the evidence considered in the disciplinary proceedings and the scope of judicial review under Article 226 of the Constitution of India was limited to correcting errors of jurisdiction and the decision making process.

13. The appellant has contended that the order passed by the Appellate Authority on 25.05.2011, was not a subject matter of the writ petition and thus, no relief could be granted to the respondent in respect of the said order. This contention, in our view is devoid of any merit. It is now well settled that proceedings under Article 226 of the Constitution of India cannot be put in any strait jacket formula and as long as the principles of natural justice have been

followed, no grievance in this regard can be made.

14. The history of the present litigation does indicate that sufficient opportunity had been granted to the appellant to meet all allegations and contentions that have been considered by the learned Single Judge while passing the impugned order. The writ petition was filed in 1988. Although the appellant had notice of the same, the appellant did not file the counter affidavit for almost 20 years and finally filed the same only in 2008. The learned Single Judge found that the decision of the Appellate Authority was without reasons and thus, the matter was remanded to the Appeal Authority for reconsideration. The Appeal Committee passed an order dated 25.05.2011, once again rejecting the appeal preferred by the appellant. At that stage, it was open for the respondent to file a fresh writ petition assailing the order dated 25.05.2011 passed by the Appeal Committee. But instead, the respondent approached this Court by filing a review petition being Review Petition No. 380/2011. The respondent took several grounds, in this review petition, for assailing the decision of the Appeal Committee. The appellant had full opportunity to meet all the contentions raised by the respondent and a reply to the review petition, traversing all the allegations made therein, was also filed by the appellant. The review petition was allowed by an order dated 27.01.2012 passed by the learned Single Judge whereby the learned Single Judge, inter alia, held as under:-

9....Though in the application it is stated that the order dated 13th January, 2011 should be reviewed but infact it is more than evident from the facts and circumstances of the case and what was urged during the hearing of this application that all that the applicant wants from this Court is a disposal of his writ petition on merits after the fresh decision of the appellate authority since earlier this Court had not even gone into the merits of his challenge against his dismissal from service. There is no doubt that this Court had while directing the appellate authority of the respondent bank to pass a speaking order in petitioner's appeal had said that, "This writ petition is disposed of..." but at that time it was never intended by this Court that whatever fresh decision the appellate authority would be taking would be accepted by the petitioner as correct under all circumstances. That order of the appellate authority had to be still approved or rejected by this Court. The order dated 13th January, 2011 was infact intended to be in the nature of a limited remand of the matter to the appellate authority though not said so by the Court specifically at that time and infact should have been said clearly in that order that the writ petition shall be taken up again by this Court on the passing of fresh order by the appellate authority. However, that error on the part of this Court, which is now being sought to be encashed by the respondent bank for its own benefit, cannot come in the way of the petitioner in getting his writ petition decided on its merits. He certainly cannot be required, after he had waited for more than two decades to get justice, to start his legal battle all over again. That would be really travesty of justice.

10. So, this Court being a Court of plenary jurisdiction is expected to undo its error which cause's irreparable injury to some litigant and to render complete justice between the litigating parties and this Court has the powers to do complete justice....

15. The respondent assailed the said decision dated 27.01.2012 before a Division Bench of this Court in LPA No. 159/2012. The principal ground urged by the appellant in LPA No. 159/2012 was that a review of an order could be allowed only on limited grounds and in the event the respondent wanted to assail the order dated 25.05.2011 passed by the Appellate Authority, he was required to file a fresh writ petition. The Division Bench rejected the aforesaid plea and, inter alia, held as under:-

2....Having regard to the peculiar facts and circumstances of this case, we are not impressed by the aforesaid arguments and are of the opinion that the impugned order does not call for any interference. Insofar as the argument predicated on the review powers is concerned, no doubt that the power of review is limited and can be exercised on a discovery of new fact and important matter, which were not within the knowledge of person seeking the review or could not have produced earlier and when there is an error apparent on the face of record. However, as pointed out above in the present case, though the application was termed as review petition, the Respondent in fact wanted the decision of the writ petition filed by him on merits.....

xxxx xxxx xxxx xxxx xxxx

3. If one has to be technical about this procedure, the Appellant may be right in his submission that after the fresh orders were passed by the appellate authority on 25.5.2011, in normal circumstances the Respondent was supposed to file substantive writ petition. However, the learned Single Judge has exercised his discretion in reviving the petition as on earlier occasion it was not decided on merits. More importantly what is to be seen is that the petition was filed by the Respondent in the year 1988. If in these circumstance, he is compelled to file fresh petition it may again take number of years before the petition matures for hearing. Having regard to these facts when we find that the learned Single Judge has been influenced by the fact that the purpose is to do complete justice in the matter and has referred to various judgments in support of this view, we do not see any reason to interfere with such an order in the aforesaid peculiar circumstances. Finding no merit in this appeal, the same is dismissed.

16. It is apparent from the above that the review petition filed by the respondent was not considered as a review petition but was accepted as an application of the respondent to assail the order of the Appellate Authority in the W.P. (C) No. 1300/1988. Although, technically, the respondent should have filed a writ petition challenging the order of the Appellate Authority, however, the learned Single Judge exercised his discretion to revive the writ petition and considered the rival contentions therein. No prejudice whatsoever was caused to the

appellant by this procedure as the appellant had full opportunity to meet the allegations made by the respondent. We find that the principles of natural justice having been complied with, the objection that the respondent ought to have been relegated to file a fresh petition is devoid of any merit.

17. The appellant has also sought to challenge the impugned judgment on the ground that the learned Single Judge exceeded his jurisdiction by re-appreciating the evidence with respect to the charges made against the respondent. It is contended that in the present case there is no procedural irregularity and, thus, the decision to remove the respondent from service cannot be interfered with.

18. It is now well settled that a court would not interfere with the decision in respect of a disciplinary action against an employee unless there is some procedural impropriety or the decision is perverse. A court will not supplant its views for that of a disciplinary authority unless the same is found to be perverse, capricious or arbitrary. As long as the decision of an Authority is bonafide and is supported by relevant material, the court would not upset the decision merely because in its opinion the said decision is erroneous. The focus of a court while exercising jurisdiction under Article 226 of the Constitution of India is more on the decision making process rather than the merits of the decision itself and unless a decision is perverse or shakes the conscience of the court, the court would not normally interfere with the same. However, it is equally well settled that the High Court would exercise its jurisdiction in the event, the same is necessary to do substantial justice between the parties.

19. In the present case, the learned Single Judge has found that there has been a miscarriage of justice and has thus, used his discretion to remedy the same. The respondent was suspended from services on account of an incident that took place on 08.06.1983. The respondent is said to have misbehaved with the Regional Manager of the appellant and also with two other officers, who had allegedly attempted to pacify the respondent and asked him to maintain the decorum, on that occasion. The respondent is stated to have used derogatory language and threatened the Regional Manager. This version is disputed by the respondent who has alleged that the Regional Manager had infact used abusive and filthy language with him. After the respondent was suspended from services pending an inquiry into the incident of 08.06.1983, he was served with a chargesheet in October 1983. The chargesheet served on the respondent contained seven other charges (i.e. charges no. 1 to 7) which were unrelated to the incident of 08.06.1983. It has been the contention of the respondent that the said charges are mala fide and have been drawn up solely with the view to take punitive action against the respondent. The respondent has contended that said charges were an afterthought and related to his commuting outside the city of his posting without permission of the competent authority and to certain allowances claimed by the petitioner. It is asserted that no discrepancy or any complaint in regard to the subject matter relating to the said seven charges had ever been pointed out to the respondent. It is contended by the respondent that

an inquiry into the said charges was premeditated at the instance of the then Regional Manager of the appellant who wanted the respondent to be removed from services. No complaint in regard to the said charges had ever been pointed out to the respondent earlier. The respondent has alleged that the complaints on which the seven new charges were framed were not supplied to the respondent in addition to other documents which had been sought for by the respondent at various stages. Although, the appellant has stated that the charges were based on internal reports/audit reports and verification, no document in this regard has been produced by the appellant. There is no credible answer from the appellant, as to how these charges came to be framed subsequent to the incident of 08.06.1983.

20. The above grievance of the respondent has not been considered by the Appellate Authority and it is in this context that the learned Single Judge has proceeded to examine the charges and has concluded that the same are without any substance. Although, the appellant has not contended that the conclusions of the learned Single Judge, on merits of the charges, are erroneous, nonetheless, it would be apposite to briefly consider the charges made against the respondent.

21. Charge No. 1 is with respect to the allegation that the respondent was residing in Delhi while he was posted at Faridabad, Gurgaon and Palwal and used to commute to Delhi without any permission from the Competent Authority. The respondent had refuted the same and also had produced witnesses who had stated that he had visited the respondent at his residences at Gurgaon, Palwal and Faridabad. The respondent also produced a letter from one Shri Verma confirming that the respondent resided on the first floor of his house in Gurgaon during the period January 1981 to July 1981. The respondent also produced an acknowledged application for ration card, and explained that the same was not issued since his name continued to be on a ration card of Delhi. Despite producing sufficient evidence, the Inquiring Officer simply proceeded to hold that the respondent was residing permanently in Delhi on account of his name continuing on the ration card and a few medical bills which indicated that the respondent and his family members had consulted a doctor at Delhi. The Inquiring Officer also relied on deposition of witnesses who stated that they had seen the respondent commute to Delhi. The learned Single Judge has examined the same and has come to a conclusion that these charges had been accepted in fact without any credible evidence.

22. It is also important to note that although the allegation is that the respondent commuted daily from his posting at Gurgaon, Palwal and Faridabad and the respective branch managers have allegedly deposed to be aware of the same, there is nothing to indicate that any objection was raised in this regard or that the matter was escalated at the material time. There is no explanation as to how the present charge came to be made after considerable time had elapsed and only after the respondent was suspended on account of an unrelated incident on 08.06.1983.

23. Charges nos. 2 to 4 relate to the respondent claiming certain allowances i.e. claiming of Transfer Allowance of Rs. 715/- (Charge 2) and Mid Academic Transfer Allowance of Rs. 740/- for a period of 19.09.1980 to 30.04.1981 (Charge 3) and Mid Academic Transfer Allowance of Rs. 1000/- for a period of July 1981 to April 1982 (Charge 4) without actually relocating to the place of transfer as he was allegedly commuting from Delhi. There is a serious contest, whether the respondent was entitled to these allowances or not, however, admittedly these claims were rejected as the Competent Authority found that the respondent was not eligible for the same. Claim for such allowances made by an employee, which are premised on his understanding as to his entitlement, cannot possibly be stated to be a misconduct on his part.

24. Charge No. 5 related to the appellant claiming Leave Travel Concession to his place of domicile in Kanpur. Admittedly, an amount of Rs. 1500/- was advanced by the appellant bank for leave travel of the respondent to his place of domicile in Kanpur. There is no dispute that Kanpur was the place of domicile of the respondent when he joined the bank in 1967. He subsequently, requested for change in his place of domicile from Kanpur to Delhi but according to the respondent, he had not received any confirmation regarding the change and, therefore, had applied for Leave Travel Concession (LTC) for visiting Kanpur. Although, it transpires that the respondent's request for change in the place of domicile to Delhi had been granted and, thus, he was not entitled to LTC to Kanpur. This amount has been subsequently recovered from the respondent from his subsistence allowance. It is material to note that the respondent had duly disclosed that he was claiming LTC for visiting Kanpur and the appellant Bank had also allowed the claim. In the given circumstances, it is difficult to accept that the respondent was guilty of misconduct.

25. Charge no. 6 relates to claiming Halting Allowance. It is alleged that the respondent unauthorisedly credited Rs. 4197/- to his savings bank account by debiting the branch of his previous posting on account of the allowance claimed by the respondent. It was alleged that the respondent would not be entitled to Halting Allowance. Although, the Inquiring Officer has accepted that Halting allowance would be payable, however, the charge sought to be sustained is that the respondent acted unauthorisedly. It is also alleged that he claimed travelling expenses from New Delhi to Palwal, instead of Gurgaon to Palwal. The respondent has disputed that he acted unauthorisedly and the enquiry proceedings also indicate that the respondent had sought production of certain documents which were not allowed. The respondent had also produced a witness who prepared the voucher in question. The said witness deposed that the Branch Manager had given instructions for preparation of the voucher. This evidence has been completely ignored by the Disciplinary Authority and the Appellate Committee.

26. The respondent had further submitted a credible explanation in regard to claiming travelling expenses from Delhi to Palwal. He has explained that at the

material time he was at New Delhi on a joining leave when he received the orders to report to Palwal and therefore submitted the travelling expenses from New Delhi to Palwal instead of Gurgaon to Palwal. There is no allegation that the bill for travelling expenses has been fabricated or forged. The finding that making such a claim, where full disclosures have been made, amounts to misconduct is clearly perverse.

27. Charge No. 7 relates to the respondent having claimed an advance of Rs. 4000/- in 1982 under the Leave Fare Concession facility to visit Puri. The appellant had subsequently, submitted a bill for a sum of Rs. 3097.50/-. The charge is that the excess amount of Rs. 902.50/- had not been refunded by the respondent. The respondent had contended that such refunds are normally adjusted from the salary due to the employees. Undisputedly, the excess amount was accepted as being owed to the appellant bank and was also so reflected in the records of the bank. There is no allegation that the bill submitted by the respondent is fabricated or erroneous. In these circumstances, it can hardly be concluded that there was any misconduct on the part of the respondent on this count.

28. The only conclusion that we can draw from Charges No. 1 to 7 as well as the inquiry proceedings conducted thereon, is that these charges were framed only to victimise the respondent. Although, at first blush it does seem that serious charges involving financial impropriety have been found against the respondent, however, the examination of the charges indicate that they are innocuous and lack substance. Most of the above referred charges (Charges Nos. 1 to 7) cannot possibly lead to a conclusion that the respondent had committed any misconduct. Coupled with the fact that the appellant has failed to produce any document, as to how these charges came to be framed, lends credibility to the contention of the respondent that these charges had been drawn up only with a view to ensure that the respondent is removed from service. The learned Single Judge has concluded, and in our view rightly so, that these charges were pressed into services only to show that the petitioner was habitual in committing acts of misconduct.

29. The only substantial charge that was required to be inquired into in the present case was with regard to the alleged misbehaviour of the respondent with his superior officer on 08.06.1983. The learned Single Judge has examined the inquiry proceedings and has come to the conclusion that the Inquiring Officer had erred in not considering the defense of the respondent. The respondent had alleged that the Regional Manager had infact used abusive language and the exchange of words that ensued on that occasion was provoked by the abusive language used by the Regional Manager. The respondent had also produced a witness who has deposed that he was present in the office of the Regional Manager at the material time. The evidence of this witness (DW-I) has been rejected by the Inquiry Officer on the ground that other witnesses had not stated that he was present on the occasion and he could not give the correct location of

the office. The said witness had in his cross examination stated that the office of the Regional Manager was located at the third floor of the office building and subsequently corrected as the same as being on the second floor. The Disciplinary Authority and the Appellate Authority have accepted the findings of the Inquiring Officer. Indisputably, Charges Nos. 8 and 9 which relate to the allegation of the respondent misbehaving with his superior officers are substantial and serious charges. The Inquiring Officer has examined several witnesses who were present in the regional office of the appellant on 08.06.1983 including the officers with whom the respondent is alleged to have misbehaved. The evidence of respondent was also recorded. The Inquiring Officer has disbelieved the defence witness and relied on the evidence produced by the prosecution. In the present case, the learned Single Judge has proceeded to re-examine and re-appreciate the evidence and has come to a conclusion that the defence evidence has been erroneously rejected by the Inquiring Officer. The learned Single Judge has also erroneously held that the respondent was not cross examined. This, in our opinion, is outside the scope of judicial review under Article 226 of the Constitution of India. A bare perusal of the records indicates that this is not a case where there was no evidence against the respondent in respect of the alleged incident of 08.06.1983. Indisputably, there is material on record which could support the view that charge nos. 8 and 9 against the respondent were made out, the question as what weightage should be given to such evidence is not for this court to consider under Article 226 of the Constitution of India. A Constitution Bench of the Supreme Court in Union of India (UOI) Vs. H.C. Goel, held that under:-

23. In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

30. Following the ratio of the aforementioned decisions, it is apparent the approach of the learned Single Judge in re-examining and re-appreciating the evidence was erroneous. The Courts cannot supplant their views over the views of the Disciplinary Authority and the scope of judicial review in such cases is limited. Unless, the court finds that the decision of the Disciplinary Authority is malafide or patently perverse or there is some manifest error in the decision making process, the courts would not interfere with the decision of the Disciplinary Authority in proceedings under article 226 of the Constitution of India. In the present case, there is no procedural impropriety and the decision of the Disciplinary Authority or the Appellate Authority cannot be stated to be

perverse. Thus, in our view, the impugned order inasmuch as it exonerates the respondent from charges nos. 8 and 9 is concerned, cannot be sustained.

31. Having held that this court could not exonerate the respondent from charges no. 8 and 9, it would also be necessary to examine whether the punishment meted out to the respondent was disproportionate or arbitrary.

32. Although the behavior of the respondent with his superior officers on 08.06.1983 has been found to be derogatory, the language used cannot be stated to be filthy or abusive. Keeping in view, the fact that there is no allegation that the respondent had in the past 16 years of his service with the appellant bank had ever misbehaved or was given to exhibiting an abrasive behavior, the disciplinary action of removing the respondent from service would be disproportionate and most arbitrary.

33. In the present case, the punishment inflicted on the respondent cannot be considered to be proportionate to the charge made against him. Even, if it is considered that the respondent misbehaved without any provocation (as is alleged by him), nonetheless, it would be unduly harsh to remove the respondent from service. It would be more so, particularly as there had been no incident of misbehaviour in the past 16 years that the respondent had served with the appellant bank.

34. The Supreme Court in *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, , considered a case where an employee was protesting about deductions that were being made from his wages and he is said to have on one occasion lost his balance with his superior and used threatening language which truly translated, read as under:-

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.

The charge of misconduct framed against the employee was established and the Disciplinary Authority awarded the punishment of removal from service. The Supreme Court held that the extreme penalty of dismissal or discharge was not justified and the punishment was either disproportionately heavy or excessive. The relevant extract of the decision of the Supreme Court is as under:-

8. 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.

9. What ought to be the proper punishment in this case? In our opinion, in such a situation withholding of two increments with future effect will be more than adequate punishment for such a low-paid employee.

The facts of the above case are similar to the facts in the present case. In the present case also there is no allegation that the respondent had used threatening or derogatory language on any occasion other than on 08.06.1983. Although, the Appellate Committee has stated that the respondent had been censored thrice. However, those incidents were not of use of any derogatory language or of bad behaviour but regarding absence without leave which were regularised. Following the aforesaid judgment in *Rama Kant Misra (supra)*, we find that the punishment meted out to the respondent in the present case is also too harsh and excessive.

35. In the case of *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, , the Supreme Court considered a case where an employee had been found guilty of using abusive and filthy language against another employee. The charges having been proved, the employee was dismissed from service. The Supreme Court considered the quantum of punishment and held as under:-

13....The charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language *Durg Singh and S.K. Bagga*. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal on the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back

wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rs. 1000. The writ petition is dismissed without costs.

36. It is settled law that the discretion to determine the quantum of punishment in disciplinary matters vests with the Disciplinary Authority and the jurisdiction of the High Court would be limited to finding whether the punishment is so disproportionate to the gravity of the charge that it would not be reasonable for any person to impose such penalty. A similar view is also expressed by the Supreme Court in *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, wherein the Court observed as under:-

19. The doctrine of proportionality is, thus, well-recognised 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 excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. 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.

37. The Supreme Court in the case of *Moni Shankar Vs. Union of India (UOI) and Another*, observed as under:-

17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See *State of U.P. Vs. Sheo Shanker Lal Srivastava and Others*, and *Management of*

Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, .

18. We must also place on record that on certain aspects even judicial review of fact is permissible. (E v. Secy. of State for the Home Deptt. [2004 QB 1044 : (2004) 2 WLR 1351 (CA)]

38. The appellant has relied upon the decision of the Supreme Court in Mahendra Nissan Allwyns Ltd. Vs. M.P. Siddappa and Another, , in New Shorrock Mills Vs. Maheshbhai T. Rao, and in U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, in support of their contention that dismissal of an employee on account of misbehaviour cannot be considered as disproportionate. In the case of Mahendra Nissan Allwyns Ltd. (supra), the charge against the respondent therein was that he had entered the factory premises regardless of the challenge by the security guard and alongwith the other workmen forcibly entered the administrative building and the office of the Deputy General Manger. The Deputy General Manager and the Manager (Personnel) of the appellant therein were abused in filthy language and were threatened by respondent therein. The respondent had also misbehaved in a similar manner with other executives of the appellant company. In the present case, there is no allegation that the respondent had entered any office building forcibly. There is also no allegation that the respondent had used abusive and filthy language as in the case of Mahendra Nissan Allwyns Ltd. (supra). In the case of U.P. State Road Transport Corpn. (supra), the charge against an employee was also serious. The employee was charged with having entered the cash room in a drunken state and having demanded cash from the Assistant Cashier. When the same was refused, the employee used abusive language and also threatened to assault the Assistant Cashier. This charge against the employee was proved. In addition to this charge, it was also established that the employee (being a Driver with the U.P. State Road Transport Corpn.) had unauthorisedly taken a bus of the appellant therein from a workshop to another place. As a punitive measure, the employee was removed from service. The Supreme Court held that the punishment awarded to the respondent therein was not disproportionate. Similarly, in the case of New Shorrock Mills (supra), the workman had entered the office of the Deputy Manager of the appellant therein and had abused him. The workman also threatened that the officers would not be safe outside the mill and that he did not care if he went to jail for murder of 4-5 officers. This charge having been established, the respondent therein was discharged from service. The Labour Court found that the punishment was excessive and harsh. The High Court also did not interfere with the decision of the Labour Court. In this case, the Supreme Court came to the conclusion that the punishment awarded was not disproportionate keeping in view the respondent's past record where the respondent had misconducted himself on several occasions and had also been punished.

39. In all the above cases relied upon by the appellant, the charges established

against the employee were materially different from the misconduct attributed to the respondent in the present case. The charge in the present case is essentially that of a heated outburst. There is no allegation that the language used was abusive or filthy. Even if the charge is established, it only leads to the conclusion that on a single occasion, the temper of the respondent was frayed and he used derogatory language and acted in a undisciplined manner. Keeping in view the past service of the respondent, this, would not warrant a punishment of removal from service.

40. We have already held that the charges no. 1 to 7 are not sustainable. However, with respect to charges no. 8 & 9, although on the evidence available a view different from that of the Disciplinary Authority is possible. Nonetheless, the view adopted by the Disciplinary Authority/Appellate Authority cannot be stated to be perverse or without any material evidence. Consequently, upsetting the decision of the Disciplinary Authority/Appellate Authority would not be warranted. However, we are of the view that the punishment of removal of service would be harsh and unreasonable in the given facts and circumstances of the case. Accordingly, we remand the matter to the Disciplinary Authority to consider the question of punishment in accordance with our decision and our observations made herein. The Disciplinary Authority would pass an order with regard to the punishment to be inflicted on the respondent after affording an opportunity to the respondent to be heard within a period of 8 weeks. The present appeal and the application stand disposed of.