State Bank Of India & Ors vs S.N. Goyal on 2 May, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2594, 2008 (8) SCC 92, 2008 AIR SCW 4355, 2008 LAB. I. C. 3514, 2009 (1) SERVLJ 403 SC, 2009 (1) BANKCLR 591, (2009) 1 MAD LW 1, 2008 (7) SCALE 415, 2008 (73) ALL LR 16 SOC, (2008) 3 SCT 1, (2008) 3 ALL WC 2755, (2008) 3 GUJ LH 512, (2008) 117 FACLR 967, (2008) 3 LAB LN 452, (2008) 5 MAD LJ 695, (2008) 5 SERVLR 76, (2008) 7 SCALE 415, (2008) 3 BANKCLR 337, (2009) 1 BANKCLR 591

Author: R.V. Raveendran

Bench: H. K. Sema, R. V. Raveendran

```
           CASE NO.:
Appeal (civil)  4243-4244 of 2004

PETITIONER:
State Bank of India & Ors

RESPONDENT:
S.N. Goyal

DATE OF JUDGMENT: 02/05/2008

BENCH:
H. K. Sema & R. V. Raveendran

JUDGMENT:
```

J U D G M E N T CIVIL APPEAL NOS. 4243-4244 OF 2004 R.V. RAVEENDRAN, J.

Theses appeals by special leave are filed by a defendant-employer (State Bank of India) against the judgment dated 11.12.2003 of the Punjab & Haryana High Court in R.S.A. No.4184 of 2002.

2. A charge-sheet dated 28.4.1994 was issued by the Appellant Bank to the respondent alleging that when he was posted as the Branch Manager of appellant's Kalanwali Branch, Sirsa, Haryana, he had received cash payments tendered by two customers of the Bank, for being credited to their loan accounts, and temporarily misappropriated such amounts and had belatedly deposited them to the borrowers' accounts (after about five months in one case and two and half months in another). The said acts amounted to a misconduct, violative of Rule 50(4) of the State Bank of India Officers Service Rules ('Service Rules' for short). An enquiry was held in regard to the said charge. The Enquiry Officer submitted his report dated 11.11.1994 holding that the charge was proved. The Disciplinary Authority furnished a copy of the said report to the respondent and gave him an opportunity to show cause in the matter.

3. Rule 68(3) of the Service Rules required, where the Disciplinary Authority was of the opinion that a major penalty is to be imposed, and where he was lower in rank to the Appointing Authority (in respect of the category of officers to which the delinquent officer belonged), that he should submit to the Appointing Authority, the records of the enquiry together with his recommendations regarding the penalty that may be imposed, and the Appointing Authority should make the order imposing the penalty, which in his opinion was appropriate. In view of the above rule, the Disciplinary Authority after considering the inquiry records and the representation of the respondent, made a recommendation on 2.5.1995 to the Appointing Authority to impose the penalty of 'removal from service' on the respondent. The Appointing Authority considered the entire material and concurred with the recommendation of the Disciplinary Authority and made an order dated 3.5.1995 imposing the penalty of removal from service, which was communicated to the Respondent by letter dated 30.6.1995 of the Disciplinary Authority.

4. The appeal and Revision (Review) filed by the Respondent were dismissed on 29.11.1995 and 27.11.1996. The respondent thereafter filed Civil Suit No.158 of 1998 on the file of the Civil Judge, Senior Division, Jind, for a declaration that the order of removal dated 30.6.1995 as also the orders of the Appellate Authority and Reviewing Authority were arbitrary and illegal. He also prayed that the said orders be set aside with a direction to take him back into service with all consequential benefits. The suit was resisted by the appellant-bank. After trial, the suit was decreed on 19.4.2003. The Trial Court found that there was no violation of principles of natural justice in conducting the enquiry and the order holding the respondent guilty of misconduct was proper. The trial court however found that the Disciplinary Authority, by his earlier note dated 18.1.1995, had recommended imposition of the penalty of reduction of pay of respondent by four stages in his time scale and the Appointing Authority had agreed with the said recommendation on 18.1.1995. According to the trail court, the said order was a final order of punishment by the Appointing Authority; and the Appointing Authority had thereafter sought the advice of the Bank's Chief Vigilance Officer, and acting on such advice, had changed his earlier decision and imposed a higher punishment by way of removal from service, by order dated 3.5.1995 (communicated on 30.6.1995). The trial court was of the view that the second order imposing penalty was passed by the Appointing Authority "on extraneous reasons after taking advice of the Chief Vigilance Officer", and that rendered the order of removal illegal, null and void. The trial court therefore set aside the order of removal dated 30.6.1995 as also the orders dated 29.11.95 and 27.11.1996 of the Appellate Authority and reviewing authority affirming the order of removal. It directed the appellant Bank to reinstate the respondent with continuity of service and all consequential benefits except back-wages. The Trial Court reserved liberty to the appellant to pass a fresh order imposing appropriate penalty on the respondent, other than the penalty of dismissal or removal from service.

5. Feeling aggrieved, both parties filed appeals. Before the First Appellate Court, the respondent did not challenge the finding of the trail court that the domestic enquiry was fair and proper and that his guilt was established. He limited his challenge only to the quantum of punishment (that is, reservation of liberty to the employer to pass a fresh order imposing appropriate penalty) and the denial of back wages. The appellant, in its appeal, contended that the Trial Court, having found that the enquiry was fair and proper and the finding of guilt was justified, ought not to have set aside the order imposing penalty. The two appeals were heard and disposed of by the Additional District

Judge, Jind, by a common judgment dated 20.7.2002. The First Appellate Court upheld the decree of the Trial Court, but in addition held that the respondent was entitled to full back wages with interest thereon at 9% per annum. Consequently, the First Appellate Court dismissed the appeal by the appellant and allowed in part the appeal of the respondent.

6. Feeling aggrieved the bank filed the second appeal, which was dismissed by the judgment under appeal. The judgment is short. After referring to the prayer in the suit and the judgments rendered by the courts below, it contains the following reasoning :

> "It is not in dispute that originally the punishment proposed against the plaintiff was to bring him lower by four steps. Subsequently on directions issued by the Chief Vigilance Commissioner of the Bank, the punishment was converted to that of dismissal. The plaintiff made a complaint that the aforesaid orders and the material placed before the Chief Vigilance Commissioner were never put to him and as such the order of punishment was violative of principles of natural justice.
>
> The learned courts below found that the contention of the plaintiff was duly substantiated from the record. Accordingly, the punishment orders were set aside with a liberty as noticed above.
>
> Nothing has been shown that the findings recorded by the learned courts below suffer from any infirmity or are contrary to law in any manner.
>
> No question of law, much less any substantial question of law, arises in this appeal."

7. We find that the High Court misread the findings of the courts below. The Trial Court held that the Appointing Authority passed the order of removal after taking the advice of the Chief Vigilance Officer. The first appellate court held that the Appointing Authority imposed the penalty of removal on the recommendations of the Chief Vigilance Officer. But the High Court observed that 'on the directions of the Chief Vigilance Commissioner of the Bank, the punishment was converted to that of dismissal'. This observation contains three errors firstly the penalty of removal was read as dismissal; secondly the communication from the Chief Vigilance Officer, termed as "advice/recommendation" by the courts below, was wrongly read as 'directions'; and thirdly, the Chief Vigilance Officer of the Bank was wrongly referred to as the Chief Vigilance Commissioner. The High Court also erroneously assumed that plaintiff (respondent herein) had pleaded that the Appointing Authority had placed certain material which was never put to him (the plaintiff), before the Chief Vigilance Commissioner and as such the order of punishment was violative of principles of natural justice. There was no such plea, nor did the courts below record a finding on any such plea.

8. We also find that the High Court completely missed the real points arising for determination. After a cursory wrong reference to the findings of the court below, the High Court wrongly held that the second appeal did not give rise to any substantial question of law, ignoring the several substantial questions of law arising for consideration of the High Court, which were clearly specified in the memorandum of second appeal. We find that the second appeal gave rise to several

substantial questions of law including the following :

> (i) Whether a direction by the Civil Court to reinstate the respondent, amounted to granting specific performance of a contract of personal service which is barred by section 14 of Specific Relief Act, 1963?
>
> (ii) In the absence of a pleading that the order imposing penalty was invalid because the Appointing Authority acted on the advice or recommendation of the Chief Vigilance Officer, and in the absence of any issue in that behalf, could the Courts below hold that the order imposing punishment was illegal on that ground?
>
> (iii) Whether an order recorded by the Appointing Authority on an office note, to impose the penalty of reduction in pay, which was neither pronounced, published or communicated, is a final decision which could not be reconsidered or altered, by the Appointing Authority?
>
> (iv) Whether the decision of the Appointing Authority imposing penalty can be said to have been influenced by extraneous material, merely because the Chief Vigilance Officer of the Bank requested him to re-examine the proposed penalty ?
>
> (v) Whether the Appointing Authority ought to have communicated the advice/recommendation of the Chief Vigilance Officer to the respondent and given him an opportunity to show cause before imposing punishment?

If questions (iii) to (v) or any of them is answered in the affirmative and as a consequence if it has to be held that the order of removal was illegal or invalid, then, the second appeal would give rise to several further substantial questions of law. One question would have been whether the civil court could direct the authority empowered to impose penalty, to restrict the punishment to something other than dismissal/removal. Another question would have been whether full back wages with interest could be awarded where the court accepts that the employee was guilty of misconduct of misappropriation. Be that as it may.

9. Before examining the merits of the matter, we may briefly refer to the scope of second appeals as also the procedure for entertaining them, as laid down in section 100 of the Code of Civil Procedure.

What is a substantial question of law?

9.1) Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question

of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this court (or by the concerned High Court so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the concerned High Court), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the concerned High Court) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this court (or the concerned High Court) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a strait-jacket definition as to when a substantial question of law arises in a case. Be that as it may.

Procedure relating to second appeals 9.2) We may next refer to the procedure relating to second appeals as evident from section 100 read with order 42 Rules 1 and 2, of Code of Civil Procedure :

(a) The appellant should set out in the memorandum of appeal, the substantial questions of law involved in the appeal.

(b) The High Court should entertain the second appeal only if it is satisfied that the case involves a substantial question of law.

(c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case.

(d) The second appeal shall be heard on the question/s of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such questions of law. The Appellant cannot urge any other ground other than the substantial question of law without the leave of the court.

(e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties or such reformulated or additional substantial questions of law.

9.3) It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are :

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question/s of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by re-appreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this court and remands by this court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected, as not involving substantial questions of law.

10. In this case, the failure on the part of the High Court to take note of the substantial questions of law involved, has led to unwarranted dismissal of the second appeal and calls for interference. One alternative available to us is to remand the matter to the High Court for formulating the substantial questions of law and then hear and dispose of the appeal. But that is likely to delay the matter further. The questions arising for decision are questions of law. These had been raised in the memorandum of second appeal before the High Court and again referred to in the special leave petition. Elaborate arguments have been addressed on those questions (extracted in para 8 above) by both sides. We are, therefore, of the view that instead of remanding the matter, we should ourselves consider the several questions of law that ought to have been considered by the High Court and decide the matter finally.

Re : Question (i) Enforcement of a contract of personal service.

11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in

section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

> (i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);
>
> (ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and
>
> (iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : Dr. S. Dutt vs. University of Delhi AIR 1958 SC 1050; Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi 1970 (2) SCR 250; Sirsi Municipality vs. Cecelia Kom Francies Tellis 1973 (3) SCR 348; Executive Committee of Vaish Degree College vs. Lakshmi Narain 1976 (2) SCR 1006; Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir AIR 1981 SC 122; and Dipak Kumar Biswas vs. Director of Public Instruction AIR 1987 SC 1422).

12. In this case the appellant is a statutory body established under the State Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed under section 43(1) of the said Act. The respondent approached the civil court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated, pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by section 14 of the Specific Relief Act.

Re : Question (ii) Effect of absence of pleading.

13. The plaint did not contain any plea that the order of removal by the Appointing Authority (Chief General Manager) was vitiated on account of his consulting and acting on the advice of the Chief Vigilance Officer of the Bank. Nor did it contain any allegation that the Appointing Authority acted

on extraneous material in passing the order of removal. In the plaint, the challenge to the order of removal was on the ground that the enquiry by the Enquiry Officer was opposed principles of natural justice that is : (i) the charge was vague and not established; (ii) he was not given reasonable opportunity to defend himself; (iii) material witnesses were not examined;

(iv) documents relied on were not formally proved; (v) burden of proof was wrongly placed on him; (vi) findings in the enquiry report were based on surmises and conjectures; and (viii) the enquiry officer was prejudiced. The respondent had also averred that the Appointing Authority had approved the recommendation made by the Disciplinary Authority for imposition of penalty of removal, without application of mind and without giving him a hearing. He alternatively contended that the punishment imposed was severe and disproportionate to the gravity of the proved charge. But there was absolutely no plea with reference to the advice/recommendation of the Chief Vigilance Officer of the Bank. However, during the examination of the Bank's witness DW-1 (T.S. Negi, Deputy Manager) it was elicited that on 18.1.1995, the Disciplinary Authority had put up a recommendation to impose the penalty of reduction of pay by four stages by taking a lenient view; that the Appointing Authority had by his note dated 18.1.1995 accepted the said recommendation; that subsequently, on 2.2.1995, the Appointing Authority had informed the Chief Vigilance Officer of the Bank about the enquiry and proposed punishment; and that after receiving the comments of the Chief Vigilance Officer, the Appointing Authority on the recommendations of the disciplinary authority had reconsidered the question of punishment and imposed the penalty of removal. The respondent plaintiff did not amend the plaint to include the averments and grounds to challenge the order of removal on the said additional ground. No issue was framed in that behalf. No amount of evidence on a plea that was not put forward in the pleadings can be looked into. In the absence of necessary pleading and issue, neither the trial court nor the appellate court could have considered the contention and recorded a finding thereon.

14. The learned counsel for the respondent submitted that the order of removal was challenged on the ground that it was opposed to principles of natural justice, and the averments in the plaint were sufficient to enable the plaintiff to establish any ground in support of it and it was not necessary to separately plead each and every fact or ground in support of his contention that the order of removal was vitiated. While there is no need to plead evidence, the grounds of challenge and the facts in support of each ground, will have to be pleaded. In this case, the minimum pleading that was necessary was that the Appointing Authority acted on extraneous material in arriving the decision or acted on the advice or recommendation of an Authority who was not concerned with the Enquiry. In the absence of appropriate pleading on a particular issue, there can be no adjudication of such issue. Adjudication of a dispute by a civil court is significantly different from the exercise of power of judicial review in a writ proceedings by the High Court. In a writ proceedings, the High Court can call for the record of the order challenged, examine the same and pass appropriate orders after giving an opportunity to the State or the statutory authority to explain any particular act or omission. In a civil suit parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings. The learned counsel for the respondent submitted that the respondent was unaware of the earlier order dated 18.1.1995 or about the consultation with the Chief Vigilance Officer when he filed the suit and therefore, could not make necessary averments in the plaint in that behalf. But that is no answer. Code of Civil Procedure contains appropriate

provisions relating to interrogatories, discovery and inspection (Order XI Rules 1, 12 and 15) to gain access to relevant material available with the other party. A party to a suit should avail those provisions and if any new ground becomes available on the basis of information secured by discovery, a party can amend his pleadings and introduce new facts and grounds which were not known earlier. The difficulty in securing relevant material or ignorance of existence of relevant material will not justify introduction of such material at the stage of evidence in the absence of pleadings relating to a particular aspect to which the material relates. If a party should be permitted to rely on evidence led on an issue/aspect not covered by pleadings, the other side will be put to a disadvantage. For example, in this case, if there had been a plea and issue on the question whether extraneous material was taken into account, the Bank could have examined the Appointing Authority to explain the context in which he informed the Chief Vigilance Officer about the matter or explain how his decision was not dependant upon any extraneous material. Therefore, the courts below committed a serious error in holding that the order of removal was based on an extraneous material (the advice/recommendation of Chief Vigilance Officer) and therefore, invalid.

15. Where the enquiry was found to be fair and proper and the finding of guilt in the enquiry in respect of a serious charge was found to be valid, in the absence of any other valid ground of challenge, the courts below ought to have held that the penalty of removal from service did not warrant any interference and dismissed the suit. Be that as it may. We will now consider the matter on merits, on the assumption that the averments in the plaint were sufficient to enable the court to consider this issue.

Re : Questions (iii) When did the Appointing Authority became functus officio.

16. Ex.P24 is the note dated 18.1.1995 by which the Disciplinary Authority accepted the finding of guilt recorded arrived at by the Enquiry Officer in regard to the charge against the respondent that he temporarily misappropriated the funds of the customers of the Bank. The Disciplinary Authority though of the view that the respondent deserved a severe punishment, felt that having regard to the length of his service, he should be shown leniency, and therefore, recommended imposition of a lesser punishment of reduction of pay by four stages in the time scale. The Appointing Authority made a note on the same day (18.1.1995) agreeing with the said recommendation. But the said order was not communicated to the respondent. On the other hand, the Disciplinary Authority on reconsideration of the matter put up a fresh note dated 2.5.1995 recommending the penalty of removal and that was accepted by the Appointing Authority on 3.5.1995 and communicated to the respondent on 30.6.1995.

17. The learned counsel for respondent contended that the Appointing Authority became functus officio once he passed the order dated 18.1.1995 agreeing with the penalty proposed by the Disciplinary Authority and cannot thereafter revise/review/modify the said order. Reliance was placed on the English decision Re : VGM Holdings Ltd, reported in 1941 (3) All. ER page 417 wherein it was held that once a Judge has made an order which has been passed and entered, he becomes functus officio and cannot thereafter vary the terms of his order and only a higher court, tribunal can vary it. What is significant is that decision does not say that the Judge becomes functus officio when he passes the order, but only when the order passed is 'entered'. The term 'entering

judgment' in English Law refers to the procedure in civil courts in which a judgment is formally recorded by court after it has been given.

18. It is true that once an Authority exercising quasi judicial power, takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage, an Authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advance Law Lexicon (3rd Edition, Vol.2 Pages 1946-47) gives the following illustrative definition of the term 'functus officio' :

> "Thus a Judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (Sixth Edition Page 673) gives its meaning as follows :

> "Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority".

19. We may first refer to the position with reference to civil courts. Order XX of Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the Court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer (if the Judge is specially empowered in this behalf). The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by section 152 or on review. Thus where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to section 152 and power of review). The position is different with reference to quasi judicial authorities. While some quasi judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become functus officio. The order dated 18.1.1995 made on an office note, was neither pronounced, nor published/notified nor

communicated. Therefore, it cannot be said that the Appointing Authority became functus officio when he signed the note on dated 18.1.1995.

20. Let us next consider whether the decision taken on 18.1.1995 is a final decision. A careful examination shows that the order dated 18.1.1995 was intended only to be tentative and not final. Firstly, the said decision was not communicated to the respondent, nor was any letter or order issued to the respondent imposing the penalty mentioned in the order dated 18.1.1995. Secondly, the Appointing Authority by letter dated 2.2.1995 (Ex.P23) informed the Chief Vigilance Officer of the Bank about the enquiry against respondent, his decision accepting the findings of the Enquiry Officer, and the proposal to show leniency by imposing only a punishment of reduction of pay by four stages. The Chief Vigilance Officer sent a reply dated 7.2.1995 (Ex.D2) wherein he observed that "by pocketing the money of the customers Sri Goyal has exposed the Bank's faith reposed in him" and there was no ground for showing leniency. He also expressed the view that the respondent deserved a more severe punishment and requested the appointing authority to re-examine whether respondent should be continued in the post. Thereafter the Disciplinary Authority reconsidered the entire issue again and put up another note dated 23.3.1995/2.5.1995 to the Appointing Authority proposing the punishment of removal from service. After considering the said recommendation, the Appointing Authority passed the following order on the said note on 3.5.1995 :

> "On a dispassionate and objective evaluation of the facts, circumstances of the case, inquiry proceedings and evidence available, I concur with the recommendations of the disciplinary authority mentioned at serial no.4 of the note and have come to the conclusion that the penalty of "removal from Bank's service" proposed to be inflicted on Sri S.L. Goyal, Officer JMGS-I, is just and appropriate and I, therefore, order imposition of this penalty on the official."

21. It is thus clear that on 18.1.1995, the Appointing Authority had only tentatively approved the proposal of the disciplinary authority that a lenient view be taken by imposing a penalty of reducing the pay by four stages in the time scale; and that on 3.5.1995, a final decision was taken in regard to the penalty and that final order was communicated to the respondent as per letter dated 30.6.1995. Therefore, the contention that the Appointing Authority had earlier passed a final order on 18.1.1995 and had become functus officio and therefore, he could not charge the said order dated 18.1.1995 is liable to be rejected.

Re : Questions (iv) and (v) Whether the Appointing Authority was influenced by extraneous material.

22. A perusal of the letter dated 2.2.1995 sent by the Appointing Authority to the Chief Vigilance Officer clearly demonstrates that the Appointing Authority did not seek any guidance or advice or directions from the Vigilance Department and that the letter was only by way of 'intimation' of factual position. For convenience, we extract below the said letter in entirely "

> "The Chief Vigilance Officer, State Bank of India, Central Office, Bombay.

Dear Sir, Staff : Supervising Shri S.N. Goyal : Officer JMGS I, Kaluana Branch Disciplinary Action.

Further to our letter No.CO/VIG/4266 dated the 19th November, 1994, we advice that the Disciplinary Authority has examined the enquiry proceedings and findings of the Inquiring Authority in the case initiated against Shri S. N. Goyal, Office JMGS I and has agreed with the same.

2. In this connection, copies of the following documents are enclosed for your perusal and record :

(i) Chargesheet issued to the official

(ii) Enquiry proceedings

(iii) Findings of the Inquiring Authority

(iv) Tabular statement showing the charges leveled against the official, findings of the Inquiring Authority, official's submissions on the findings and Disciplinary Authority's comments thereon.

(v) Note put up by the Disciplinary Authority to the Appointing Authority viz., the Chief General Manager.

(vi) Bio-data of the Official.

3. In view of the seriousness of the charge proved against Shri S.N. Goyal, Officer JMGS I, he deserves a severe punishment. The Disciplinary Authority is, however, inclined to take a lenient view in the matter considering the length of service put in by the official in the Bank and also to provide him a chance to reform himself. The Disciplinary Authority is of the view that the ends of justice will be met if the official is brought down by four stages in his time scale in terms of Rule 67 (e) of State Bank of India Officers Service Rules to which I concur in the capacity as the Appointing Authority of the official.

Yours faithfully, Chief General Manager."

23. The reply dated 7.2.1995 from the Chief Vigilance Officer also makes it clear that he neither issued any direction to the Appointing Authority to impose a higher punishment nor altered the finding regarding guilt. He merely gave his opinion that the gravity of the proved charge did not warrant leniency and therefore, suggested that the quantum of penalty may be examined again. The subsequent note put up by the disciplinary authority on 2.5.1995 and the order passed thereon by the appointing authority on 3.5.1995 imposing the penalty of removal, show that they were on independent consideration of the question. Neither the note dated 2.5.1995 nor the order dated 3.5.1995 refer to the opinion or the view expressed by the Chief Vigilance Officer of the Bank. Nor is

there any material to show that the order imposing punishment was on the dictates of the Chief Vigilance Officer. There was no mechanical acceptance of any suggestion or advice by the Chief Vigilance Officer nor consideration of any extraneous material as assumed by the courts below. The Appointing Authority is required to inform the vigilance department in regard to cases involving vigilance angle. The Appointing Authority did so. But he did not seek any instruction, direction, suggestion or advice from the Vigilance Department. There was also no direction or circular or instruction requiring the Appointing Authority to accept or act upon the suggestions or views of the Chief Vigilance Officer. The Vigilance Department merely gave its comment or view that it was not a fit case for showing leniency and left it to the concerned authority to take a decision on the punishment to be imposed. So long as the decision was not on the dictates of the Vigilance Department or other outside authority, but on independent consideration, the order of removal cannot be faulted. It cannot be said that either the act of intimating the Vigilance Department about the enquiry or independently re-considering the issue of penalty after receiving the views of the Vigilance Department amounted to be acting on extraneous material, or acting on the advice or recommendation or direction of the Chief Vigilance Officer.

24. The assumption made by the High Court that the Appointing Authority had placed some undisclosed additional material before the Chief Vigilance Officer is without any basis. The Enquiry Officer had found the respondent guilty of the charge on consideration of the evidence. The finding of guilt was accepted by the Disciplinary Authority and the Appointing Authority. This is not a case where any evidence or other material was sent to the vigilance department seeking their decision or views on the question of guilt of the respondent. The issue relating to the respondent's guilt was neither referred to the Vigilance Department nor did the Vigilance Department give any finding on the question of guilt. When the Disciplinary Authority and the Appointing Authority accepted the finding of guilt recorded by the Enquiry Officer on examining the facts, even before the matter was informed to Vigilance Department, it cannot be said that the said decision was influenced by any extraneous advice from Vigilance Department. The issue on which the Vigilance Department made its comment was on the limited ground whether any leniency should be shown in imposing punishment. No additional facts or material were placed by the Appointing Authority before the Vigilance Department for this purpose. Further the Vigilance Department merely expressed the view that the gravity of the charge did not warrant leniency and the authority should examine the matter. Therefore the assumption by the High Court that the Appointing Authority had placed some material not put to the respondent, before the Chief Vigilance Officer and that the Chief Vigilance Officer had issued any direction to the Appointing Authority on the basis of such material, is baseless.

25. The Disciplinary Authority made available the Enquiry Report to the respondent to enable him to make his submissions on the findings of the Enquiry Officer. The respondent made his submissions in regard to the Enquiry Report. The correspondence between the Appointing Authority and Chief Vigilance Officer of the Bank was not 'material' on which the finding regarding guilt/misconduct was based. Such correspondence was subsequent to the Enquiry Report. There was no compulsion or requirement that the Appointing Authority should consult the Chief Vigilance Officer or act as per his recommendations or directions. Nor was there any direction by the Chief Vigilance Officer to impose any specific direction. Therefore non furnishing of copies of the

correspondence between the Appointing Authority and the Chief Vigilance Officer to the respondent, did not violate principles of natural justice nor vitiate the order of penalty.

26. The decisions relied on by the respondent do not lay down any proposition of law which requires us to take a different view in the matter.

26.1) In Nagaraj Shivarao Karjagi vs. Syndicate Bank - 1991 (3) SCC 219, this Court considered a case where the employer Bank referred the matter to the Chief Vigilance Commissioner (for short 'CVC') for advice and the Commissioner made a specific recommendation that the employee may be compulsorily retired from service by way of punishment. The impugned directive of the Ministry of Finance directed that the disciplinary authority and appellate authority could not impose a lesser punishment than what was suggested by CVC without its concurrence. The Bank accordingly imposed the penalty of compulsory retirement. This Court held that the advice tendered by the CVC was not binding on the punishing authority and it was not obligatory upon the punishing authority to accept the advice of the CVC. This Court held that no third party like CVC or Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. This Court also held that the Finance Ministry directive that a punishment lesser than what was recommended by the CVC could not be imposed, was without jurisdiction and contrary to the statutory regulations governing disciplinary matters. The said decision is of no assistance in this case, as there is no directive that the recommendation of the Vigilance Department is mandatory and should be followed while imposing punishment; nor has the Vigilance Department directed the punishing authority to impose any specific punishment; nor has the appointing authority acted on the dictates of the Vigilance Department.

26.2) The next decision relied upon by the respondent is the decision rendered by this Court in State Bank of India vs. D.C. Aggarwal [1993 (1) SCC 13]. In that case, the Enquiry Officer recommended exoneration of the employee. Instead of acting on the recommendation, the Bank directed the Enquiry Officer to submit the report through CVC. The CVC disagreed with the finding of the Enquiry Officer and recorded a finding of guilt and recommended the imposition of major penalty of removal. A copy of the CVC's recommendation was not furnished to the employee. The disciplinary authority acting on the recommendation of the CVC and agreeing with CVC's finding of guilt, passed an order but imposed a punishment lesser than what was directed by CVC. This Court held that the order of the disciplinary authority imposing punishment was vitiated as it violated the principles of natural justice by denying the copy of the recommendation of the CVC which was prepared behind his back. The said decision therefore related to CVC examining the facts of the case and arrived at a finding relating to guilt contrary to the finding of the Enquiry Officer and such finding being accepted by the Disciplinary Authority without giving opportunity to the employee to comment upon the CVC Report finding him guilty. In this case as noticed above, the Enquiry Report relating to guilt was not referred to the opinion of the Vigilance Department at all. The Vigilance Department neither expressed any view in regard to the finding of guilt recorded by the Enquiry Officer nor did it re-assess the evidence or arrive at a finding different from that of the Enquiry Officer. It merely opined that the case was not a fit one for showing leniency while imposing punishment and left it to the Appointing Authority to take his own decision in the matter. Therefore, this decision is also of no

assistance.

26.3) Reference was next made to the decision of this Court in Mohd. Quaramuddin (dead) By LRs. vs. State of AP [1994 (5) SCC 118]. In that case, the Chief Vigilance Commissioner's report which formed part of the report of the enquiry and which was taken into consideration by the disciplinary authority was not supplied to the employee. It was held that the omission has vitiated the order of dismissal. The said decision is also of no assistance.

26.4) The last decision relied on by the respondent was UP State Agro Industrial Corporation Ltd. Vs. Padam Chand Jain 1995 SCC (L&S 1011). In that case, the report of the Enquiry Officer was in favour of the employee exonerating him of all charges. The Disciplinary Authority invited the comments of the Accounts Officer and relying on the basis of the adverse comments made by such officer, held the employee guilty and terminated him from service. This Court upheld the view of the High Court that the decision of the Disciplinary Authority was vitiated on account of the same being influenced by some extraneous material in the form of adverse comments of the Accounts Officer. That is not the case here.

27. The learned counsel for respondent submitted that as the order of removal was set aside and as the employer's second appeal was rejected, he should be permitted to support the decision of the courts below by demonstrating that the Enquiry Officer had violated the principles of natural justice and therefore, the order of removal deserves to be set aside. This is not permissible. Though in the suit, the respondent had challenged the enquiry as being opposed to principles of natural justice, and the finding guilt recorded by the Enquiry Officer as being erroneous, he gave up those contentions before the first appellate court, and restricted the challenge to the quantum of punishment and non-grant of back wages. He cannot therefore be permitted to revive the contention that the Enquiry Officer violated the principles of natural justice in conducting the enquiry.

28. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected.

29. In view of the above we allow these appeals and set aside the judgments and decrees of the courts below and dismiss the respondent's suit.