(2007) 11 PAT CK 0088

In the Patna High Court

Case No : C.W.J.C. No. 827 of 2001

Krishna Ram — APPELLANT

Vs

The State Bank of India and Others — RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Citation : (2007) 11 PAT CK 0088

Final Decision : Allowed

Judgement

J.N. Singh, J.—Petitioner in this writ application has prayed for quashing of the order of punishment of dismissal awarded by the disciplinary authority vide memo dated 23rd June, 1999 (As contained in Annexure - 7), as well as for quashing of order of the appellate authority dated 7th April, 2000 (as contained in Annexure - 13), as well as for quashing of the inquiry report dated 20th May, 1998 (annexure - 4). Petitioner has also prayed for follow up orders for reinstatement with all consequential benefits treating him in regular service. In the alternative, petitioner has prayed for a direction to the appellate authority to adhere to his proposed punishment/decision dated 8th December, 1999 contained in Ref. No. ZO/B/DPS/2588 as decision in appeal. Petitioner has also prayed for a declaration that the disciplinary proceeding being a quasi-judicial proceeding, any external authority, including Vigilance cannot direct and/or dictate terms to the disciplinary authority and/or the appellate authority in the matter including the punishment to be imposed.

2. The facts of the case, as culled out in the writ application, in short, are that while at the relevant time petitioner was working as messenger in the Lalpaniya Branch of the respondent Bank, certain documents in the Branch were found tampered relating to the savings account on 15th and 16th of March 1992. Petitioner was prima facie found involved and, therefore, he was put under suspension. Vide memo dated 22nd December, 1992 (as contained in Annexure - 1), petitioner was served with charges and was asked to show cause to the charges. Petitioner submitted his reply on 2nd February, 1993 (as contained in

Annexure-2) in which he denied the charges and pleaded innocence. However, the disciplinary authority was not satisfied with his reply and, vide memo dated 25th February, 1993 (as contained in Annexure - 3), decided to institute regular departmental inquiry against the petitioner and appointed Sri A.K. Jyotishi, Branch Manager of Katihar Branch as inquiry officer. By letter dated 28th August, 1993, the inquiry officer was changed and one Sri M.N. Jena was appointed as inquiry officer. The inquiry officer started preliminary hearing on 24th April, 1993 and completed the same and submitted his report to the disciplinary authority on 15th May, 1995. However, the disciplinary authority found certain infirmities in the inquiry and directed the inquiry officer to re-open the inquiry from the stage of evidence. Accordingly the inquiry was re-opened and was closed on 13th December, 1997 and the report was submitted on 20th May, 1998 (as contained in Annexure - 4). In his report the inquiry officer found charge Nos. A & C as proved, charge No. D partially proved and charge No. B & E as not proved. Thereafter the disciplinary authority issued show cause notice (as contained in Annexure - 5) to the petitioner to the proposed punishment of dismissal without any notice. Petitioner filed his show cause (as contained in Annexure - 6). On 23.6.1999, the disciplinary authority rejected the show cause of the petitioner and passed orders of punishment of dismissal of the petitioner, (as contained in Annexure - 7) without any notice.

3. Petitioner preferred appeal on 2nd August, 1999 (as contained in Annexure - 8) before the Deputy General Manager, the appellate authority. By memo dated 14th September, 1999 (as contained in Annexure - 9) the appellate authority asked the petitioner to appear before him on 23rd September, 1999. Accordingly petitioner appeared before the appellate authority on the date fixed and presented his case. The appellate authority considered the entire matter and decided to modify the punishment by reinstating the petitioner in the same capacity by bringing down his salary to the lowest in the pay scale, transferring the petitioner to a remote Branch of the Bank, period of suspension was not to be treated as duty and nothing was to be paid to the petitioner for the period except subsistence allowance, and he was to draw his salary and allowance only from the date he resumes the duty of the Bank at his new place of posting. However, the appellate authority forwarded his speaking order along with connected materials, vide letter dated 8th December, 1999 (as contained in Annexure - 10) to the head office for consideration and advice. It appears that the Deputy General Manager, (Vigilance), did not approve the decision of the appellate authority and he wrote to the General Manager (D & PB) on 26th May, 2000 (as contained in Annexure - 11) that the Vigilance was not in favour of continuing the petitioner in the Bank. The said view of the Vigilance was approved by the General Manager and hence the same was forwarded vide letter dated 12th July, 2000 (as contained in Annexure - 12) to the appellate authority. Accordingly, the appellate authority issued orders dated 7th April, 2000 (as contained in Annexure - 13) inflicting punishment of removal from service upon the petitioner. The contention of the petitioner is that the said order was never

served on the petitioner and the same was only pasted on the notice board of Tenughat Branch of the Bank, which the petitioner could learn only in December 2000 and he could copy the same. It is stated that during the suspension period also the respondents have taken work from the petitioner, in support of which Annexures - 14, 14/1 and 15 have been produced.

4. In the background of the facts as disclosed in the writ petition and noticed above, at the final hearing stage, learned senior counsel for the petitioner submitted that the appellate authority, exercising quasi judicial powers, was duty bound in law to take its independent decision in the matter and pass appropriate orders on the appeal of the petitioner. He submitted that, in fact, the appellate authority had arrived at a decision earlier, vide Annexure - 10 dated 8th December, 1999, and communicated the same to the higher authorities of the Bank. However, on the dictates of the higher authorities of the Bank as well as that of the Vigilance, he had to change his decision and had to issue the impugned order as contained in Annexure - 13. Therefore, learned senior counsel for the petitioner submitted that impugned Annexure - 13 is vitiated on account of having been issued on the direction/suggestion of external authority/person and as such the same is fit to be quashed. Learned senior counsel for the petitioner submitted that the appellate authority, exercising his quasi judicial powers, had already arrived at the decision on the appeal of the petitioner, vide Annexure - 10, and the reference by him to the General Manager (D & PB) being a futile exercise in law, this Court should issue a direction to the respondents to treat the same as final order passed in the appeal and adhere to it and take consequential steps pursuant to the same.

5. Learned senior counsel for the petitioner next submitted that the impugned order, as contained in Annexure - 13, was never communicated/served on the petitioner, hence the same cannot be treated as final and operative against the petitioner. Therefore the petitioner should be treated in service and should be granted all consequential benefits.

6. In reply to the writ petition, respondents have filed counter affidavit in the case. Apart from reiterating the facts of the case it has been stated that the appellate authority, taking a lenient view, modified the order of punishment of ''dismissal without notice'' to ''removal from service'', vide Annexure - 13, which is perfectly legal and valid and the punishment imposed is justified. While denying the statements and assertions made in various paragraphs of the writ petition, it is stated in the counter affidavit that Annexures 10 to 12 are internal communications between Zonal Office and Local Head Office and as such are not relevant. It is further said in the counter affidavit that the appellate authority, upon independent consideration of entire matter, and after hearing the petitioner and his defence counsel, passed orders as contained in Annexure - 13. The same was communicated to the petitioner by registered cover No. 1949 dated 22nd June, 2000 and a copy of the same was also put on the notice board of Tenughat Branch, where the petitioner was posted. It has been denied that the impugned

order was issued by the appellate authority on the dictate of or under the influence of any other authority.

7. A reply to the counter affidavit of respondents was filed by the petitioner. In the reply usual challenges and objections have been raised against the averments made in the counter affidavit of the respondents and the assertions made in the writ petition have been reiterated. It has been reasserted that the appellate order has been passed on the dictate of Deputy General Manager (Vigilance) of the respondent Bank and the impugned order is not based on objective consideration of the appellate authority and thus is unsustainable in the eye of law. It is also asserted that respondents have taken regular work from the petitioner even during the period of his suspension for which testimonials of good behaviour and good conduct were granted by the officers of the respondent Bank as annexed with the writ petition.

8. The respondents have filed a supplementary counter affidavit in the case enclosing a number of the documents as Annexures. It is also asserted that in his memo of appeal, the petitioner had not challenged the merit and legality of the order passed by the disciplinary authority and had only pleaded for reinstatement on the ground of humanity and compassion and to allow his children to return from deserted hope. It has been stated that the appellate authority took a tentative decision and sought advice of the General Manger (D & PB) by Annexure - 10. On receipt of the said letter of the appellate authority the D.G.M. (Vigilance) prepared a note on 27th December, 1999 in which it was resolved, inter alia, not to interfere in the appeal process and the appellate authority was suggested to take the decision in the appeal on the merit of the case. The said note has been annexed as Annexure - A/1. Further, in response to the letter of the appellate authority (Annexure - 10), the D.G.M. (Vigilance) advised the appellate authority by letter dated 12th January, 2000 (annexed as Annexure-A/2) to take a decision in the matter on the case keeping in view of the guidelines issued by the central office regarding staff accountability in the case of fraud. Thereafter, the appellate authority passed order dated 7th April, 2000, a copy of which has been annexed with the affidavit as Annexure-- A/3. Even after passing of the said order, the appellate authority, vide letters dated 18th April, 2000 and 12th June, 2000 (annexed as Annexures - A/4 & A/5) requested the General Manager (D & PB) to give sympathetic consideration in the matter on humanitarian grounds. It is further stated in paragraph 12 of the affidavit that the said request of the appellate authority was considered by the Vigilance Department of the Bank. But since as per the Central Office Guidelines, no penalty less than termination of service was to be imposed in such fraud cases, they did not agree with the view of the appellate authority. Accordingly, the decision of the General Manager (D & PB) was communicated to the appellate authority on 12th July, 2000 (as contained in Annexure - 12) along with the note of D.G.M. (Vigilance), as contained in annexure - 11. The order of the appellate authority dated 7th April, 2000 was communicated to the petitioner on 20th June, 2000. It is stated in paragraph 15 of the affidavit that "according to the

extant procedure followed in the Bank, every case of disciplinary proceeding involving fraud etc. is put to the knowledge of the Vigilance Dept. of the Bank for the purpose of equity and uniformity which is part of internal system." The respondents have claimed support from the case of Nagaraja Shivaram Karjegi (referred to by the learned senior counsel for the petitioner) on the ground that in that case the interference by the Central Vigilance Commission was held to be bad, whereas in the case of the respondent Bank the matter of fraud etc. is put to the knowledge of the Vigilance Department of the Bank for the purpose of equity and uniformity.

9. In reply to the submission of the learned senior counsel for the petitioner that the impugned order has never been communicated to the petitioner, an affidavit, by way of ''Amplification of the Supplementary Counter Affidavit'' has been filed on behalf of the respondents in which copies of letter of the General Manger (D & PB) dated 8th April, 2000, Branch letter dated 20th June, 2000, envelope, registration receipt, service sheet, Branch Manager''s letter dated 30th June, 2000, AGM''s letter dated 26th August, 2000, envelope of letter under certificate of posting, Branch''s letter dated 7th September, 2000 and copy of D.G.M''s letter dated 20th November, 2000 are annexed as Annexures - A/6 to A/15 respectively.

10. In reply to the submissions of learned senior counsel for the petitioner, learned senior counsel for the respondents did not dispute the legal proposition advanced by the learned senior counsel for the petitioner and fairly accepted the legal proposition that a quasi judicial authority is legally obliged to apply its independent judicial mind to a matter before him. He accepted that the decisions of the quasi judicial authority will get vitiated if the same is influenced by the direction/suggestion of any external authority/person and shall not be sustainable in law. He accepted, as a legal proposition, that if in a departmental proceeding, an appellate authority decides the appeal of the delinquent and passes order on the dictates/advice of higher authority or of external authority, the same shall be palpably illegal and bad in law and fit to be quashed. He, however, submitted that the impugned order of the appellate authority (Annexure - 13), as a fact, was not issued on the direction/suggestion of any higher or external authority/person and the consideration and decision of the appellate authority was absolutely independent and objective. He submitted that in response to the letter of the appellate authority, as contained in Annexure -10, the D.G.M. (Vigilance) prepared the note dated 27th December, 1999 (Annexure - A/1) resolving that there should not be any interference in the appeal process and the appellate authority should take decision in the appeal on merits. Further, by letter dated 12th January, 2000 (Annexure- A/2), the D.G.M. (Vigilance) advised the appellate authority to take decision in the matter keeping in view the guidelines issued by the Central Office regarding staff accountability in the case of fraud. Learned senior counsel for the respondents submitted that thereafter the appellate authority applied his objective mind to the matter and passed the impugned order dated 7th April, 2000 (Annexure - 13). Learned senior counsel for the respondents further submitted that, as the appellate authority, even after

passing of the final order dated 7th April, 2000, requested for reconsideration of the matter sympathetically by his letters dated 18th April, 2000 and 12th June, 2000 (Annexures - A/4 & A/5), the view of the Vigilance, as contained in the note dated 26th May, 2000 (Annexure - 11), was forwarded by the General Manager(D & PB) by letter dated 12th July, 2000 (Annexure - 12) with his approval. Thus he submitted that the decision of the appellate authority dated 7th April, 2000 (Annexure -13) was much prior to the issue and receipt of Annexures 11 & 12 by the appellate authority and hence his said decision was not influenced by Annexures 11 & 12. He further submitted that Annexures - A/4 & B/4, on the other hand, would show that the appellate authority was left to take decision in the matters on merits and in view of guidelines laid down by Central Office.

11. Learned senior counsel for the respondents further submitted that all efforts were made to serve the impugned order upon the petitioner as would be evident from documents annexed with affidavit filed as ''Amplification of the Supplementary Counter Affidavit''. However, the petitioner always avoided to receive the same and was continuously absent from his known place of residence. Hence the order was put on the notice board of the Branch of the Bank where the petitioner was posted. Therefore, he submitted that the plea of non-service of the order upon him and benefit of the same in law will not be available to him.

12. In reply, learned Senior Counsel for the petitioner submitted that Annexure - 13 was actually ante-dated. The appellate authority prepared the said order in back date after receipt of the note of the D.G.M. (Vigilance) as contained in Annexure - 11. He submitted that this would be apparent from the fact that the said order dated 7th April, 2000 (Annexure - 13) does not find mention in any of the correspondences between the respondents made subsequently. He further submitted that this will also be evident from the fact that in subsequent letters, Annexures - A/4 and A/5, the appellate authority does not mention about passing of the final order by him on 7th April, 2000. He submitted that if the appellate authority had passed final order in the appeal of the petitioner on 7th April, 2000, there was, indeed, no occasion for the appellate authority to write letters on 18th April, 2000 and 12th June, 2000 (Annexures - A/4 & A/5) for sympathetic consideration in the matter on humanitarian grounds. This shows that till then he had not taken any decision in the matter and, in view of the stand of the Vigilance and the General Manager (D & PB), he was repeatedly requesting them to reconsider the matter. But ultimately he had to pass the order antedating it to a date prior to issue of Annexure - 11, the note of D.G.M. (Vigilance).

13. Although the learned senior counsel for respondents accepted the legal propositions advanced by learned senior counsel for petitioner, learned senior counsel for the petitioner, to substantiate the same, has referred to Prof. de Smith''s ''Judicial Review of Administrative Action'' (4th Edition) at page 309 and

commentary under heading ''Acting under Dictation''.

14. He further referred to the judgment of Supreme Court in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, In that case two notifications of the Cane Commissioner, Bihar, issued under Clause 6 of Sugar Cane (Control) Order, 1966, were under challenge, by which 99 villages were excluded from the reserved area of appellant Mill and by the second notification the same was included in the reserved area of the respondent Mill. The appellant filed writ application in the Patna High Court challenging the said notifications. However, the same was dismissed. Hence appellant filed the appeal in the Apex Court. Facts of the case disclose that the appellant Mill was situated in U.P. just on the borders of Bihar and its major supply of sugar cane was from villages falling in Bihar. In the circumstances, in the meeting between the authorities of the State of U.P. and the State of Bihar agreement was arrived at pursuant to which 208 villages falling in Bihar were reserved for appellant Mill. Subsequently, respondent Mill filed a representation before the Chief Minister, Bihar, that as it was a Bihar Mill the villages reserved with the appellant Mill should be de-reserved and should be reserved with the respondent Mill. The Apex Court found that the Cane Commissioner was firmly of the view that reservation made in favour of appellant Mill in terms of agreement with the U.P. authorities should not be disturbed, but the Chief Minister was inclined in favour of respondent Mill. Finally discussion was held with the Chief Minister and in view of the discussion, note was put up for division of villages reserved for appellant Mill and the same was finally approved by the Chief Minister. Accordingly impugned notifications were issued under the signature of the Cane Commissioner. Contention of the learned senior counsel for the State of Bihar that the Cane Commissioner, although, had been consulted by the Chief Minister, but the impugned order was really made by the former, was negatived by the Apex Court and it was held that the impugned orders, though purported to have been made by the Cane Commissioner, were in fact made by the Chief Minister and hence they were invalid. Learned senior counsel for the petitioner particularly referred to paragraph 12 of the judgment as quoted hereunder:

12 - The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as whole when it is relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

15. Learned senior counsel for the petitioner next referred to another judgment of Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, This was a case of disciplinary proceeding against a manager of Syndicate Bank posted at a branch in New Delhi. Inquiry against him was held by a Commissioner for Vigilance Inquiry from Central Vigilance Commission who held the appellant guilty. Accordingly, the Bank referred the

matter to the Central Vigilance Commission for advice which recommended for compulsory retirement of the appellant. Thereafter the disciplinary authority after considering the inquiry report and affording an opportunity to the appellant passed orders of his compulsory retirement. Appeal by the appellant before the General Manager was also dismissed. High Court also dismissed the writ, hence the appeal by the delinquent before the Apex Court. Apex Court noticed the provisions of the Central Vigilance Commission Manual prescribing for consultation at the initiation of proceeding and also at the conclusion of the proceeding. It also noticed the Direction of the Ministry of Finance, Department of Economic Affairs (Banking Division) to all the Banking Institutions making it obligatory to accept the recommendations of the Commission. Appellant, aware of these provisions had questioned the legality and propriety of the same before the appellate authority itself. Stand of the Bank in the Court was that notwithstanding the advice of the Central Vigilance Commission, case of the appellant was fully considered by the disciplinary authority and the appellate authority independently. The Apex Court held that it was not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission and also that Ministry of Finance had no jurisdiction to issue the impugned directive. In the result the appeal was allowed and the orders impugned were quashed.

16. In support of his second contention, learned senior counsel for the petitioner relied upon the judgment of the Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, In this case the appellant, a Qanungo and later appointed as Assistant Consolidation Officer was dismissed from service on the charges of tampering with official records. He appealed before the Revenue Minister of the State of Pepsu, who, after considering the matter, made a note on the file that punishment be modified, the delinquent be reinstated and reverted to original post. However, on the next day the State of Pepsu was merged with the State of Punjab. Thereafter, the file went up to the Chief Minister of Punjab who approved the dismissal order. Writ filed by the appellant before the High Court was dismissed. Hence he moved the Apex Court in appeal. In the Apex Court the appellant took the stand that the order of the Revenue Minister of Pepsu was final and had been communicated to him verbally. Therefore the Chief Minister of Punjab had no authority to pass orders in the matter approving the dismissal order of the appellant. The Apex Court rejected the said submissions on behalf of the appellant and held that the order of the Revenue Minister on the file was not final as the same was not issued and communicated to the appellant. The appeal of the delinquent was therefore dismissed.

17. On an earlier date, learned senior counsel for the respondents had referred to certain citations upon which he intended to rely at the time of final hearing. However, in view of issues raised by the learned senior counsel for the petitioner based on records of the case, learned senior counsel for the respondents did not refer to any citation at the time of final hearing of the case.

18. In view of issues raised in the case being largely dependent on the records,

by an order passed on an earlier date, the learned senior counsel for the respondents was directed to produce the original file of the departmental proceeding with regard to the petitioner. The file was produced and I have perused the documents and papers kept in the file.

19. From the documents available in the file, it appears that a detailed note with regard to appeal of the petitioner was placed by the General Manager (D.P.S.) before the appellate authority on 17th November, 1999. The appellate authority examined the matter in detail and passed orders modifying the punishment imposed on the petitioner. It appears that the punishment which the appellate authority decided to impose on the petitioner was communicated to the Head Office for consideration and necessary advice in the matter by his letter dated 8th December, 1999 (as contained in Annexure-10 to the writ application). In reply to the said letter, it appears that the D.G.M. (Vigilance) wrote a letter to the appellate authority on 12th January, 2000 (as contained in Annexure-A/2 to the supplementary counter affidavit) in which the appellate authority was advised to take decision on the merits of the case keeping in view the guidelines issued by the Central Office regarding staff accountability in the case. It appears that the appellate authority still held his view and he again wrote a letter No. ZO/ B/DPS/3161 dated 8th February, 2000 in which he proceeded on the basis of modified punishment of the petitioner and proposed for placement of the service of the petitioner either in Purnea module or Muzaffarpur Module subject to concurrence of the Head Office. Since the said letter is not on the record of the case, it will be useful to quote the contents of the said letter herein below:

The General Manager (D & PB) State Bank of India, Local Head Office, Patna

PRIVATE & CONFIDENTIAL

Dear Sir,

STAFF : AWARD Shri Krishna Ram, Messenger (since Dismissed)

This fax has a reference to the undernoted communications held in between us and Head Office:

(a) Head Office letter Nos. (i) VIZ/B/359 dated 06.07.99,

(ii) VIG/B/976 dated 12.01.2000

(b) Our letter No. ZO/B/DPS/2558 dated 8.12.99.

2. In this connection, please refer to para 2(iii)(b) of our aforesaid letter. We presume that the undersigned is not the appropriate authority to decide the module at the disposal of which the services of Shri Krishna Ram, Messenger (since dismissed) may/shall be placed on his reinstatement in Bank''s Service as proposed/decided and ordered by us. Since Sri Ram had been working at Branches nearby the territory of Ranchi Module, we recommend that his services may be placed at the disposal either of Purnea or of Muzaffarpur Module, subject to Head Office concurrence.

3. However, we shall proceed further in the matter only on receipt of Head Office advice on this point.

Yours faithfully,

Sd/- (Dy. General Manager)

20. This shows that the appellate authority had already made up his mind and had taken a final decision with regard to punishment of the petitioner which he communicated to the Head Office through Annexure-10. He somehow did not satisfy the Head Office and particularly the Vigilance section of the Bank. Therefore, the D.G.M. (Vigilance) directly wrote a letter to the appellate authority vide letter No. VIZ/B/1988 dated 25th March, 2000 in which it was clearly indicated that no punishment less than termination of service should be imposed in such cases. Since this document is also not on record, it will be useful to quote the contents of this letter hereinbelow:

PRIVATE & CONFIDENTIAL

The Dy. General Manager State Bank of India Zonal Office BHAGALPUR

Dear Sir,

STAFF : AWARD SHRI KRISHNA RAM, Messenger (SINCE DISMISSED)

With reference to your letter No. DO/B/DPS/3161 dated 08.02.2000, we have reviewed the matter in the light of Central Office guidelines (re: appeal) as conveyed to you vide our letter No. VIZ/B/1940 DATED 08.03.2000. The charge of misappropriation has been admitted by the employee and also proved by evidences produced in the enquiry. As per Central office guidelines, no penalty less than termination of service should be imposed in such cases. Appellate Authority may reconsider the tentative decision.

Yours faithfully,

Sd/- (DEPUTY GENERAL MANAGER (VIGILANCE)

21. The documents referred to above and the events enumerated clearly show that the appellate authority had already made up his mind to modify the punishment of the petitioner in the manner as indicated in Annexure-10. However, the Head Office and the Vigilance Department of the Bank kept on insisting for awarding of punishment of termination of service of the petitioner and the appellate authority was clearly instructed for the same. In the circumstances a note was put up by the Manager (D.P.S.), Bhagalpur to the appellate authority on 31st March, 2000 indicating that in view of the letter of the Head Office dated 25th March, 2000, as referred to above, punishment of termination of service may be imposed upon the petitioner. In the circumstances, the appellate authority passed orders of termination of service of the petitioner, which is contained in Annexure-13 to the writ application. The sequence of events clearly show that all sorts of pressure and influence was exercised by the

D.G.M. (Vigilance) and the Head Office upon the appellate authority to change his view and give up his earlier stand of modifying the punishment imposed upon the petitioner and impose upon him a harsher punishment of termination of service. It also appears that the appellate authority was not satisfied by this and the decision imposed upon him and the orders passed by him on the dictates and influence of the Vigilance and the Head Office was still not acceptable to him and therefore he again wrote a letter to the Head Office to take a sympathetic view in the matter vide Annexures-A/4 and A/5 to the supplementary counter affidavit. Thus, the letters of the appellate authority, as contained in Annexure-10, letter dated 8th February, 2000 and the letters contained in Annexures A/4 and A/5 clearly show that the appellate authority was never agreeable to the view of the Vigilance and the head office that harsher punishment of termination of service should be imposed upon the petitioner. Being faced with this insistence by the appellate authority for modification of the punishment of the petitioner, the D.G.M. (Vigilance) put a note to the General Manager. (D.& P.B.) on 26th May, 2000 which is contained in Annexure-11 to the writ petition. The said note of the D.G. M. (Vigilance) was approved by the General Manager (D & P.B) and communicated to the appellate authority vide Annexure-12 to the writ application.

22. Nevertheless, as noticed earlier, the chronological reading of the documents and letters apparently shows that the appellate authority was never convinced with regard to the punishment proposed and insisted by the vigilance to be imposed upon the petitioner. Even after passing of the impugned order, as contained in Annexure-13, the appellate authority kept on insisting for reconsideration of the matter vide Annexure-A/4 and A/5 to the supplementary counter affidavit. This shows that the impugned order (Annexure-13) was passed by him on the dictate and at the insistence of the Vigilance which did not satisfy the conscience of the appellate authority. From Annexures A/4 and A/5 it is apparent that the conscience of the appellate authority pricked even after passing of the impugned order (Annexure-13) and he still insisted for reconsideration of the matter. Thus, it is apparent that the impugned order (Annexure-13) was not an order passed by the appellate authority on his independent application of mind in the matter and after objective consideration of all aspects of the case. In the circumstances it is apparent that the impugned order of punishment (Annexure-13) passed by the appellate authority is vitiated on account of external influence upon the appellate authority having been issued on the dictates of the Vigilance Department of the Bank and is bad in law and not sustainable. In the circumstances, no option is left to this Court but to quash Annexure-13 and the same is hereby quashed.

23. In view of the findings arrived at by this Court, as above, it is not necessary to go into the question as to whether Annexure-13 was ante dated or not although it may be mentioned here that from the reading of the documents and papers from the file of the relevant period, it appears that Annexure-13 finds reference for the first time in a correspondence made by the appellate authority to the D.G.M. (Vigilance) dated 20th July, 2000. In no other correspondence

between 7th April, 2000, the purported date of issue of Annexure-13 and said letter dated 20th July, 2000 there is any reference at all of Annexure-13 and there is any mention at all by any authority with regard to passing of final orders by the appellate authority on 7th April, 2000 which may lend support to the contention of the learned senior counsel for the petitioner that after issue of Annexures-11 and 12, the said letter, as contained in Annexure-13, was issued ante dating the same.

24. However, as said earlier, this issue need not be gone into any further to be decided in view of the findings arrived at by this Court as above with regard to unsustainability of the impugned order (Annexure-13) on account of having been issued on external influence and dictates of external authorities.

25. Now the question arises as to what further direction or orders may be issued in the case as a consequence of quashing of Annexure-13. As a consequence of quashing of Annexure-13, logically the appeal before the appellate authority revives and the appellate authority is required to consider it afresh and pass appropriate orders in exercise of quasi judicial powers by independent application of mind to it and upon objective consideration of facts and materials available on record without being influenced or dictated by any other authority. Although several prayers were made in the writ application but at the time of hearing of the case, learned senior counsel for the petitioner had confined his submissions to only two issues, as detailed above. The second issue so far service of order on the petitioner is concerned, does not remain relevant in view of quashing of Annexure-13. However, learned senior counsel for the petitioner had also advanced his submissions on the point of finality of the order of the appellate authority as indicated in Annexure-10. Learned senior counsel for the petitioner had submitted that as the appellate authority in exercise of quasi judicial powers had arrived at a final decision as apparent from Annexure-10, the reference by him to the General Manager (D & PB) was a futile exercise only. Learned senior counsel for the respondents did not place any material on record or drew the attention of the Court to any rules/regulations/circulars of the Bank making it obligatory on the part of the disciplinary authority and/or appellate authority to obtain advice and guidance of higher authorities of the Bank in the matter of passing of final orders in the proceeding. In the circumstances, learned senior counsel for the petitioner submitted that the order, as contained in Annexure-10 be treated as final order of the appellate authority and the respondents be directed to adhere to the same and take consequential steps pursuant to it.

26. During hearing of the case, learned senior counsel for the petitioner did not advance submissions challenging the order of disciplinary authority or the enquiry report and his entire submissions were confined to the legality and validity of the impugned Annexure-13 with the stand that the order as indicated in Annexure-10 was indeed a final order of the appellate authority. Thus, the matter rests at the appellate stage and the option left with this Court is either to remit the matter back to the appellate authority for fresh application of mind and

independent and objective consideration and to pass appropriate orders afresh on the appeal of the petitioner or to direct the respondents to treat the order of the appellate authority, as contained in Annexure-10, as a final order passed by the appellate authority directing them to adhere to it and take consequential steps for implementation of the same. From, the note dated 17th November, 1999 contained in the file and the order of the appellate authority on the same dated 18th November, 1999, it clearly appears that the same was meant to be final. Nothing appears from the said note which runs into several pages and the detailed order of the appellate authority on the same that the appellate authority in any way thought to obtain advice or guidance in the matter from any higher authority of the Vigilance.

27. Learned Counsel for the respondents also did not point out or drew the attention of this Court to any requirement in law or any requirements by any circulars, letters of guidelines or policy decision of the Bank requiring an order of the appellate authority passed in exercise of quasi judicial powers to be placed before the higher authority or the Vigilance before giving it finality. Thus, it appears that the reference by the appellate authority of his order dated 18th November, 1999 to the D.G.M (D & PB) vide Annexure-10 was unwarranted and not required in law. Hence it can be safely held that any requirement of any concurrence or advice by the higher authority to an order of the appellate authority in the disciplinary proceeding in exercise of quasi judicial powers having not been brought to the notice of this Court by the respondents, it is held that the order of the appellate authority dated 18th November, 1999 as indicated in Annexure-10 was a final order of the appellate authority in the matter. Hence, while quashing the impugned order (Annexure-13) on the grounds as indicated above, the respondents are also directed to treat the order of the appellate authority dated 18th November, 1999, as contained in Annexure-10, as final order passed by him in the appeal of the petitioner. Respondents are directed to adhere to the same and take consequential steps for implementation of the same.

28. In the result, this writ application is allowed with the aforesaid observations and directions. No costs.

