
(1999) 07 DEL CK 0038
In the Delhi High Court
Case No : CW No. 2748 of 1995

K.N. Sharma

APPELLANT

Vs

Chief General Manager, State Bank of India

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 85 DLT 269 : (2000) 54 DRJ 777

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Geeta Luthra, for the Appellant; Rakesh K. Singh, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the following reliefs:

"It is, Therefore, respectfully prayed that this Hon"ble Court may be graciously pleased to -

- (a) issue writ of mandamus and certiorari or any other writ;
- (b) direct the respondent to grant pension benefits to the petitioner from the date of his retirement;
- (c) to grant interim pension to the petitioner till the disposal of the present petition;

2. The facts of the case have to be recounted in some detail and they are as follows:

The petitioner, who died during the pendency of the writ petition, was working in National Bank of Lahore Limited, Delhi. On the 20th of February, 1970, a notification was issued in the Gazette of India, Ministry of Finance, by which the National Bank of Lahore Limited was amalgamated with the State Bank of India. The Scheme for amalgamation provided for, inter alia, absorbing all employees

working in National Bank of Lahore. We are not very much concerned with the terms of amalgamation. All the employees working in National Bank of Lahore were absorbed, except 12 employees shown in the Schedule attached to the Scheme. They are as under :

Schedule attached to and forming part of the Scheme for the amalgamation of the National Bank of Lahore Ltd. as sanctioned by the Central Government (under Sub-section (7) of Section 45 of the Banking Regulation Act, 1949 (10 of 1959).

Name of the Employee Designation in the Transferor Bank

Sh. Sant Singh Manager, Head Office

Sh. Mukund Lal Manager, Head Office

Sh. C.L. Gugnani Manager, Darya Ganj

Sh. Piare Lal Anand Accountant, Head Office

Sh. A.P. Rishi Accountant, Head Office

Sh. G.M. Kapoor Accountant, Sadar Bazar Branch

Sh. M.L. Budhwar Manager, Najafgarh Road, Branch.

Sh. M.L. Arora Asstt. Manager, Agra Br.

Sh. B. S. Anand Accountant, Jullundhar City Branch

Sh. M.L. Anand Manager, Rishikesh Br.

3. In clause 13 of the Scheme of Amalgamation/Notification dated 20.2.1970, it is stated:

"All the employees of the transferor Bank other than those specified in the Schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee Bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediate before the 11th January, 1970;

Provided that the employees of the transferor Bank who have, by notice in writing given to the transferor or the transferee Bank at any time before the expiry of one month next following the date on which this Scheme has been sanctioned by the Central Government/ intimated their intention of not becoming employees of the transferee Bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules or authorisations of the transferor Bank immediately before the 11th January, 1970;

Provided further that the transferee Bank shall in respect of the employees of the

transferor Bank who are deemed to have been appointed as employees of the transferee Bank be deemed also to have taken over liability for the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee Bank on the basis that their service has been continuous and has not been interrupted by their transfer to the transferee Bank."

4. Clause 14 of the scheme of Amalgamation provided as under:

"The persons specified in the schedule annexed to this scheme shall, on the prescribed date, cease to be the employees of the transferor Bank and notwithstanding anything contained in any law for the time being in force or any agreement or contract, the persons so specified shall be entitled to and only to such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible to them under the rules of authorisations of the transferor Bank immediately before 11th January, 1970;

Provided that the compensation, if any, for the..... of employment, so far as it relates to the unexpired portion of any contract of service, shall be such and only such as may be determined by the Reserve Bank (whose determination in this respect shall be final and binding.

Provided further that nothing herein shall be deemed to prevent the transferee Bank from re-employing any person whose name has been specified in the Schedule annexed to this Scheme in such capacity and on such terms and conditions as the transferee Bank may deem fit."

Out of the 12 mentioned employees in the Schedule, Shri Ram Prakash Chopra, officiating General Manager, Head Office and Shri Kailash Nath Sharma, petitioner in the writ petition, working as Secretary, Head Office, were given employment in the State Bank of India.

5. On the 20th February, 1970, the General Manager, National Bank of Lahore Limited wrote to the petitioner stating:

"Banking Regulation Act, 1949

In terms of Section 45 of the above Act, the Central Government have specified 23rd February, 1970 as the date from which the National Bank of Lahore Ltd. will be amalgamated with State Bank of India.

2. In terms of paragraph 14 of the Scheme of Amalgamation sanctioned by the Central Government, vide their Notification No. F. 17(2)-BC/70(iv) of date, your name has been specified in the Schedule annexure to the Scheme. You shall, Therefore, on the prescribed date viz. 23.2.1970, cease to be the employee of the National Bank of Lahore Ltd. (under moratorium) subject, of course, to other provisions in this regard mentioned in the Scheme of Amalgamation.

3. Accordingly, you will stand relieved of your assignment as at the close of the 22nd February, 1970.

4. A cheque for your salary and allowances up to and including 22.2.1970 is enclosed. (Rs. 1190.98)."

6. On the 22nd of July, 1970, the petitioner wrote to the Secretary and Treasurer, State Bank of India, L.H.O., Parliament Street, New Delhi in the following terms :

"Consequent upon the amalgamation of National Bank of Lahore Limited with State Bank of India, I ceased to be the employee of the National Bank of Lahore Limited and was re-employed by State Bank of India on 23rd February, 1970.

2. I shall be thankful if gratuity payable under the Rules of erstwhile National Bank of Lahore Limited is paid to me."

7. As could be seen from Clause 14 of the Scheme, the employees mentioned in the Schedule would become entitled to pension. On the 13th of June, 1983, a Memorandum was issued by the State Bank of India with reference to the terms of the amalgamation and in paragraph 2 of the Memorandum, in respect of the eligibility of pension, it is stated :

"The matter with regard to the eligibility of pension in respect of members of the staff of the said Bank who were not made members of the State Bank of India Pension Fund Rules in view of their age as on 1.3.1970 was engaging the Bank's attention for quite some time. The matter has been examined at Central Office and it has now been decided that all former members of NBL staff who were absorbed in our Bank's service and were within 35 years of age at the time of joining service in the erstwhile National Bank of Lahore Limited, will be eligible to pension while retiring from the Bank. However, those employees who were not made members of Bank's Pension Fund Rules with effect from 1.3.1970 in view of their age, will have the option to choose either gratuity on the terms and conditions as stated above or the benefit of pension. The service for pension purposes in respect of such employees will be considered from the date of their joining in the erstwhile National Bank of Lahore Limited, but only after their attaining the age of 21 years."

8. On the 27th of April, 1984, the petitioner made a representation to the Chief General Manager, State Bank of India, New Delhi after his retirement on the 31st of May, 1983. The representation of the petitioner dated 27.4.1984 reads as under:

"I beg to advise that I retired from the service of the State Bank of India, Delhi Regional Office, New Delhi, as S.M.G.S.-IVA on 31.5.1983 and was allowed only gratuity for 13 months without any pension benefit.

2. In this connection, I beg to submit the following for your kind consideration:

(i) As per Scheme of Amalgamation of the said Bank, the services of 12 employees (including myself) came to an end. Out of them, 10 employees were those who had either already exceeded the age of retirement and were employed/re-employed by the said Bank after their retirement or who were

about to reach the retirement age. The remaining two employees viz., myself and late Shri R.P. Chopra, the then General Manager of that Bank, were offered re-employment by State Bank of India and were employed by them from the very date of amalgamation of the National Bank of Lahore Limited with a view that there should not be any break in their service as in the case of other NBL employees absorbed in State Bank of India, Obviously their names were included in the Schedule along with the other 10 employees attached to the said Scheme, simply for the reason that they could not be permitted the same emoluments and perks by the State Bank of India as per their rules if they were to be taken over with continued service under the Scheme of Amalgamation as was done in the case of other NBL employees. To overcome this situation this procedure was adopted and otherwise there was no intention to give a break in their service. So the re-appointment, in my case, was more for technical reasons than any other consideration and there was no intention of the Bank to deprive me of any benefits(s) which was/were then available or to be offered in future to the other employees of the transferor Bank taken over by State Bank of India for all practical purposes my position by virtue of reappointment is in no way different from those absorbed otherwise.

(iii) That after my retirement all the members of staff of the erstwhile National Bank of Lahore Limited who were not over 35 years of age at the time of their confirmation in the National Bank of Lahore Limited and were taken over by State Bank of India under the Scheme of Amalgamation have been declared eligible to pension benefit and options to avail themselves of the pension benefits have been invited even from those members who have retired before this decision of allowing pension benefit was taken.

(iv) In this connection, you would kindly agree that the pension benefit has been extended to the employees of practically all the Banks which were amalgamated with State Bank of India in order to mitigate the financial hardship which employees have to face after retirement particularly when the price line is shooting up like a meteor.

3. In view of the above, I would request that I should also be allowed pension keeping in view the services put in by me in the erstwhile National Bank of Lahore Limited and State Bank of India, as has been decided in case of all other employees.

4. It will not be out of place to mention here that the only other employees to be reappointed Along with me, viz. Shri. R.P. Chopra expired while he was still on leave preparatory to retirement.

5. I am sure that the authorities will not deprive me of the human consideration underlying the extension of this terminal benefit to the employees of the transferor Bank and extend the same to me also and provide me with wherewithal for my old age keeping in view my honest, dedicated and sincere services rendered up to both the Banks which had always been recognised and

appreciated by the authorities throughout the period of my service. In the event of my request being acceded to, I undertake to refund the amount received by me from the erstwhile National Bank of Lahore Limited and the excess amount received from State Bank of India by way of gratuity.

6. Hence, I would like to bring out more pertinent point to your kind notice. Mine being a solitary case of this nature this point is peculiar one. Having joined the State Bank of India Employees Mutual Welfare Scheme sponsored by the Bank, I have become eligible to the benefits under the scheme and accordingly in the event of my death, by wife will be entitled to a monthly pension of Rs. 500/- whereas I as an employee who has put in 38 years sincere service, have not been allowed any pension during my life-time. You will please agree that the position is really curious, comical and paradoxical, all at once."

9. On the 14th of July, 1984, the Chief General Manager, State Bank of India, wrote to the Managing Director, State Bank of India, Bombay, setting out the history of the employment of the petitioner and stating that the petitioner may be permitted to have the pensionary benefits. The letter dated 14.7.1984 reads as under :

"Shri. Kailash Nath Sharma had joined the erstwhile National Bank of Lahore Limited on 9.4.1945 (date of birth 11.5.1923). His service came to an end on the close of business on 22.2.1970 as his name was listed in the Schedule attached to the Scheme of Amalgamation of the said Bank with State Bank of India. In terms of your letter No. 3826 dated 18.2.1970, a letter of appointment was issued to Shri Sharma on 21.2.1970 two days prior to the date of amalgamation, re-appointing him in our Bank with effect from 23.2.1970. The said letter contained the terms and service conditions governing his re-appointment in our Bank wherein it is specifically stated that pension benefit will not be extended to him.

2. Shri Sharma retired from the Bank service on 31.5.1983 on completing 60 years of age. Shri Sharma has now made an application dated 27.4.1984 (photo-copy enclosed) for sanction of pension, pleading therein that since there was no break in his service by virtue of his service in National Bank of Lahore Limited coming to an end and his re-appointment in State Bank of India, his case was practically the same as of any other National Bank of Lahore employee who was absorbed in our Bank and stood to gain the pension benefits provided that his age was less than 35 years at the time of his confirmation in National Bank of Lahore Limited. He has averred that the termination of his services with the transferor Bank on the eve of its amalgamation with State Bank of India and his re-appointment in our Bank was merely to circumvent certain technical hurdles in his being fitted appropriately in our salary structure than for any other reasons. The fact that he was reappointed in our Bank on the very next day i.e. 23.12.1970 shows that there was no intention on our Bank's part to impose a real break in his service. It could, at worst, be considered only notional or symbolic. As such, he feels that it would be rather harsh if he were to be

deprived of the pension benefit subsequently extended to all the employees of the erstwhile National Bank of Lahore Limited absorbed in our Bank, subject to their being below 35 years of age at the time of their confirmation on permanent staff of the transferor Bank and not as earlier decided, at the time of their absorption in our Bank. In his representation Shri Sharma has, inter alia, touched the Welfare Scheme also and has stated that by virtue of his having joined the scheme his wife, if she survives him, will be entitled to a monthly pension of Rs. 500/- during her lifetime, whereas during his own life-time he will not be entitled to that benefit. Further Shri Sharma has offered that in the event of pension being sanctioned, he would refund the excess gratuity paid to him i.e. the amount paid in excess of the amount which would have otherwise become due to him in terms of the Payment of Gratuity Act, 1972.

3. Of course, we are not in a position to comment on the background of the case and the considerations that weighed with the Management in deciding to re-appoint Shri Sharma in our Bank with effect from the very next day i.e. the day next to his services with the erstwhile National Bank of Lahore coming to an end, the fact remains that there has virtually been no break in his service. May be, there is really some substance in what Shri Sharma maintains i.e. that the exercise of the termination of his service and re-appointment was undertaken for certain purely technical reasons. This point may kindly be vetted at your end.

4. Now coming to the pension benefit, as per our pension rules, no employee who joined/joins the Bank's services after the age of 35 years is entitled to pension benefit. Since Shri Sharma was re-appointed in our Bank when he was already over 35 years of age the fact that he was then denied the pension benefit vide the terms and conditions detailed in the aforementioned letter of appointment needs no hair-splitting. But then we have to take into consideration the undernoted points arising out/the then obtaining and the subsequent developments in regard to the service conditions of the employees of the transferor Bank absorbed by us, to have a circumspective view of the instant case -

(i) It was much after the amalgamation that in terms of your letter PER/ IR/6869 dated 9th Feb. 1984 the benefit of pension was granted to the erstwhile National Bank of Lahore employees absorbed in our Bank, who were below 35 years of age at the time of their confirmation in that Bank's service. By virtue of this, every employee of the National Bank of Lahore Limited now on our pay-roll excepting Shri Sharma has become eligible for pension benefit.

(ii) Except for certain technical hurdle(s) in Shri Sharma being straight away absorbed in our Bank there was apparently nothing about him to preclude that. In the absence of those hurdles Shri Sharma too would have been governed by the same terms and conditions as were made applicable to his other colleagues absorbed in our Bank.

(iii) Just as Shri Sharma was debarred from the pension benefit vide the terms

and conditions of his service, many more employees of the erstwhile National Bank of Lahore Limited would have been denied this benefit in terms of the instructions contained in Central Office letter No. OP/26165 dated 21.12.1970. The position was[^] however, reviewed subsequently and pension was allowed to all those who were not over 35 years of age at the time of their confirmation in the transferor Bank, Shri Sharma's case, however, being of a class apart, could not be covered under this general relaxation.

(iv) At that material time there were quite a few of the National Bank of Lahore employees who though absorbed as permanent employees in our Bank, because of their age were initially not considered eligible for pension benefit. Subsequently, however, in terms of our Cir. Memo No. PER/163 of 1983 this terminal benefit has been extended to all those who, irrespective of their age at the time of absorption in our Bank, were below the age of 35 years at the time of their confirmation in National Bank of Lahore Limited. Since Shri Sharma was given an appointment in our Bank in a special grade comprised the erstwhile staff officer Grade III and II combined when he was approximately 47 years of age purely and simply because of his being an employee of National Bank of Lahore Limited and the status he enjoyed there, it would sound only logical and fair if for purposes of the pension benefit, a relaxation is made in the terms and conditions on which he was initially "re-appointed" as we have done, subsequent to the date of their absorption, in the case of all other employees of all the Banks merged into our Bank who were considered otherwise eligible for the extension of the pension benefit in the light of the decision taken in respect of the Bank of Behar employees. It is pertinent to mention here that Shri Sharma was not even 23 years old as on the date of his confirmation in the National Bank of Lahore Limited.

(v) Shri Sharma was paid gratuity once amounting to Rs. 11,700/- in respect of service rendered in National Bank of Lahore Limited on 3.4.1971 and again Rs. 33,800/- on retirement from State Bank of India (total gratuity paid Rs. 45,500/-), Thus, in the event of our acceding to Shri Sharma's request for grant of pension in terms of the extant rules governing these terminal benefits, he shall have to refund Rs. 34,757.70 on account of excess amount of gratuity paid to him, to which Shri Sharma has agreed.

5. In view of the foregoing and the fact that Shri Sharma who, because of his re-appointment in the Bank on special and favourable terms and conditions, has become the sole exception to the pension benefit extended to all the employees of the erstwhile National Bank of Lahore Limited absorbed by us, we recommend that notwithstanding his re-appointment, the pension benefit may be allowed to him also, as a special case. Incidentally, the only other officer, namely, Shri R.P. Chopra, who was re-appointed along with Shri Sharma and could have possibly claimed this benefit, had already expired on 9.3.1977 while on leave preparatory to his retirement from the Bank's service."

10. On the 26th of October, 1984, the Chief General Manager, State Bank of

India, wrote to the Deputy Managing Director (Personnel & Services), State Bank of India, Bombay, that the benefit of pension should be given to the petitioner granting relaxation. It was also noted that the re-employment of the petitioner was on the very next date of the termination of his services with the National Bank of Lahore Limited, The Chief General Manager, State Bank of India specifically noted:

"As a result of that each one of the ex-employee of the National Bank of Lahore Limited absorbed in our Bank, became eligible to pension. Shri Sharma, however, by virtue of his re-employment and not absorption in our Bank necessitated by the ambivalence of his special status in the National Bank of Lahore Limited became the sole exception to the terminal benefit accruing under this benevolent gesture."

11. On the 26th of August, 1985, the petitioner wrote to the Chairman, State Bank of India, Bombay, in the following terms:

"In reply to my representation dated the 27th April, 1984 (Copy enclosed for ready reference) I have been advised by the Regional Manager, Delhi, Regional Office vide his Letter No. NBL/1712 dated the 21st May, 1985 that my appeal has not found favor with Central Office.

In this connection, I crave your indulgence to permit me to highlight certain aspects peculiar to my case which I feel have escaped central office attention. Kindly bear with me for a while.

Having served this august institution for more than 13 years in responsible positions and prior to having worked as Secretary in the erstwhile National Bank of Lahore Limited, I cannot afford to have the illusion that my case can be or even should be dealt with in isolation of the cases of similarly placed erstwhile employees of some other amalgamated Banks. It will, however, not be out of place if I were to submit that my appeal be considered only in the background of the terms and conditions governing the employees of the erstwhile National Bank of Lahore Limited and parity be drawn between the similarly placed employees of only those Banks which were amalgamated with State Bank of India under schemes of merger exactly identical to that of NBL Ltd. So far as I remember the scheme covering the amalgamation of Krishnaram Baldeo Bank Ltd. materially differed from those governing the merger of Bank of Behar Ltd. and NBL Ltd. with State Bank of India in matters of details/modalities in respect of the absorption of the staff of the respective transferor Banks, whereas, on amalgamation, the erstwhile employee of Krishnaram Baldeo Bank Ltd. were taken in SBI as new entrants and only limited benefits arising out of this situation were extended to them, in the case of Bank of Behar Limited and National Bank of Lahore Limited except for the very few employees of those Banks whose names were included in the Schedule attached to the respective schemes, all the employees of the two aforementioned transferor Banks were absorbed in State Bank of India with the benefit of continuity of their service.

Again, out of the erstwhile employee of those two Banks whose names appeared on the Schedule, a few were reappointed by the Bank in terms of the provisions made to that effect in the respective schemes for amalgamation while practically all the employees of the transferor Banks were absorbed by the transferee Bank because it was mandatory to do so, the reappointment of the few out of those initially included in the schedule, was obviously influenced by the merits of those individuals. As such, it would appear to be an antithesis to the concept of recognition and encouragement of quality and merit if those very employees reappointed in consideration of their merit, suitability and utility to the Bank were to be denied the facility which was extended to all and sundry.

To begin with, all the employees even of the erstwhile Bank of Behar Limited and NBL Limited absorbed by SBI for purpose of extension of facility of pension, were treated just as those of K.B. Bank, as new recruits and only those of them who were not over 35 years of age as on the date of amalgamation, were allowed to become members of the Bank's pension fund. Subsequently, however, their cases were reviewed and this terminal benefits was extended to all those erstwhile employees of Bank of Behar Limited and NBL Limited who were below the age of 35 years at the time of their confirmation on the respective staff of the two aforesaid Banks. This benefit was, however, not extended to the erstwhile employee of K.B. Bank. Obviously, these employees have, for all practical purposes, been treated as a class apart, and no parity has been accorded to them with those of the erstwhile Bank of Behar Limited and NBL Limited employees. As such, I feel it will be miscarriage of justice if my case for grant of pension were to be bracketed with or considered in the background of the benefits extended to the K.B. Bank employees for the simple reason of reappointment in exclusion to all other factors applicable to my other colleagues in the employment of either Bank of Behar Limited or NBL Limited which are more relevant to and have a direct bearing on my service conditions. My contention is that had the liberal view with regard to extending terminal benefit of pension which was taken by the Bank in 1987 been taken right at the time of amalgamation i.e. in February, 1970 the restrictive clause with regard to grant of pension, incorporated in the letter of my reappointment, may not have been there. Now that the authorities have been gracious and benevolent enough to revise on their own, the service conditions, for better, of quite a few thousand erstwhile employees of the Bank of Behar Limited and National Bank of Lahore Limited, it will only be in keeping with the noble traditions of fairplay, equity and justice that the Bank has always been upholding, if the same benefit is extended to me also. Far it be from a show of conceit and self praise, but it will not be out of place to submit here that during the course of limited service in State Bank of India, I have acquitted myself honourably. I was promoted to S.M.G.S. IV A in recognition of my work and worth.

So far as the NBL Limited is concerned, I happen to be the only employee falling in this category. There may be some similarly placed employees of the erstwhile Bank of Behar Limited too. However, there may not be more than a dozen of

such employees in all.

I agree that in the event of my request for grant of pension being considered favourably in isolation of the other similarly placed employees of erstwhile Bank of Behar Limited there are bound to be certain repercussions. Since, however, besides human considerations the principle of fairplay, equity and justice is also involved in it, the Bank may as a gesture of goodwill, extend this terminal benefit to other eligible ones/similarly placed ones in other Banks merged with State Bank of India under the Schemes identical to those governing Bank of Behar and National Bank of Lahore Limited also just as they had earlier extended on their own volition, this benefit to the erstwhile employees of the NBL Limited following the precept of Bank of Behar Limited. The result at cost incidence, I am quite sure, is not going to outweigh their keen sense of dispensation of justice tempered with grace and benevolence to their employees. Here, even at the risk of repetition, I may once again submit that in the event of my request being acceded I shall have to refund about Rs. 34,000/- (Thirty-four thousand rupees only) out of the gratuity paid to me under service rules. Similarly, other similarly placed employees shall have to refund quite substantial amounts, or receive less amount by way of gratuity on their retirement."

12. On the 19th of January, 1985, the Deputy Managing Director (P&S), State Bank of India, Bombay, wrote to the Chief General Manager, State Bank of India, New Delhi regretting the inability to accede to the request of the petitioner to grant him pension. The same reads as under:

Staff: Supervising Shri Kailash Nath Sharma SMGSIVA (Retd.) Pension.

WithreferencetoyourletterNo.CC/DRC/NBL/6543datedOctober264984 we have examined the matter. Notwithstanding what has been stated therein Shri K.N. Sharma's case for pension does not fall within the approval of the Executive Committee of the Central Board already accorded in respect of employees of the erstwhile National Bank of Lahore Limited inasmuch as Shri Sharma's service was terminated immediately before amalgamation of National Bank of Lahore Limited and he was appointed as a fresh recruit. If we have to extend the benefit of pension to Shri Sharma by suitable amendment to the Executive Committee of the Central Board's earlier approval, we will have to do it for all other similarly placed erstwhile employees of the National Bank of Lahore Limited and Bank of Behar Limited. Shri Sharma's case cannot be dealt with in isolation of cases of employees of other amalgamated Banks. In the case of K.B. Bank Limited and some other Banks where the employees were taken as new recruits, it has already been decided that those who have entered the Bank service after 35 years of age are not eligible for the benefit of pension taken in the case of Sharma who is also similarly placed, is bound to have repercussions in those cases.

The other alternative to deal with Shri K.N. Sharma's case is the grant of pension to him by the Central Board in exercise of powers vested in them in

terms of Regulations 52(2)(d) of the SBI General Regulations which power the Bank has not so far exercised and there is no case for considering his case under the special provision. We, Therefore, regret our inability to accede to the request of Shri Sharma to grant him pension."

13. On the 27th of July, 1986, there was a note by the Chief Regional Manager, State Bank of India, to the Chief General Manager, State Bank of India, recommending grant of pension to the petitioner. The same reads as under:

"Kindly refer to Central Office letter No. ADM: SC 720 dated 15th October, 1985 placed below flag A.

To recapitulate the case, Shri Kailash Nath Sharma, SMGS IVA who retired from the Bank's service on the 31st May, 1983 was formerly working as Secretary in the erstwhile National Bank of Lahore Limited. He was appointed in the Bank on 23.2.1970 along with Shri R.P. Chopra the General Manager of the aforesaid transferor Bank. While Shri Sharma was appointed is a special grade comprised the erstwhile Staff Officer Grade III & II (SBI) combined, Shri Chopra was taken as a Staff Officer Grade II (SBI). Both of them were however denied the benefit of pension. Shri Chopra died while he was on leave preparatory to retirement. Shri Sharma had represented on 27.4.84 for favor of his case being reviewed flag B.

The salient features of the case are summarized hereunder for your information:

(i) Shri Sharma's name was included in the list of employees of the NBL Limited who were not to be absorbed in our Bank with the remarks : "No corresponding rank or status can be offered to him in the Bank." This list was submitted to Central Office vide our letter No. SGT/CC/ 23 dated the 6th of February, 1970.

(ii) A letter of appointment was issued to Shri Sharma on 24.2.1970 i.e. two days prior to the date of amalgamation in terms of Central Office letter No. 3826 dated 18.2.1970 re-appointing him in our Bank w.e.f. 23.2.1970 in a special grade comprised the erstwhile Staff Officer Grade III & II (Combined).

(iii) The under-noted remarks are incorporated against the name of Shri Sharma in the list submitted to Central Office under our letter No. SGT/ CC/24 dated 10.2.1970. "He joined the NBL Limited in April, 1945 and was appointed as Secretary in May, 1964". He is an experienced and knowledgeable official with good personality. He can fit in very well as on office of our Bank and initially we will utilise his services in administrative matters arriving out of the amalgamation. He may be fixed in the scale of Staff Officer Grade III (SBI) on a basic pay of Rs. 1190/-per month.

(iv) Shri Sharma was re-appointed in our Bank on the very next date of his services with the NBL Limited coming to an end.

(v) Shri Sharma was promoted to the Staff Officer Grade I w.e.f. 1.8.79 and was placed in the scale of SMGSIVA w.e.f. 1.10.1979.

From the foregoing it is obvious that the termination of Shri Sharma's service and re-appointment was only notional and symbolic and that this entire exercise has been gone through only to circumvent the technical hurdles in his being appropriately fitted in the Bank hierarchy than for any other reason. Thus no break in Shri Sharma's service was intended and this keenness to enlist his services.

The reason adduced for including Shri Sharma's name in Schedule read in conjunction with the remarks incorporated in list submitted to Central Office vide our letter No. S&T/CC/24 dated 10.2.1970 make it absolutely clear that the very facts of his holding an exalted position in the NBL Limited had acted to his disadvantage. His re-appointment can at least be taken as an exercise to put a good fact on the matter. In fact Shri Sharma was presented with a fait accompli and was left with little choice.

Another noteworthy feature of the case is that initially it was decided in terms of C.O. letter No. OP/26165 dated 21.2.1970 that only those employees of the NBL absorbed in Bank as were not over 35 years of age as on the date of amalgamation would be eligible for pension. Shri Sharma that possibly it was in this background that a specific stipulation to that effect was made in the terms and conditions governing their appointment in the Bank and he and Shri Chopra were denied the benefit of pension.

However, the position was reviewed subsequently and in terms of our circular No. PER/163 of 1983, the pension benefit was extended to all those were not over 25 years of age at the time of their confirmation in the transferor Bank, by virtue of this, every employee of the NBL Limited now in our pay roll excepting Shri K.N. Sharma (Shri Chopra having already died before retirement) has become eligible for pension benefit although he was not even 23 years old as on the date of his confirmation in the National Bank of Lahore Limited.

The case was referred to Central Office with our recommendations for favourable consideration vide our letter No. CO/DRO/N3I/4225 of 14.7.84 (Flag C). Certain information sought by Central Office on the subject vide their letter No. ADM/41806 of 27.8.84 was supplied to them vide our letter No. CC/ DRO/ NBL/6534 of 26/30.10.84 (Flag D) in reply to which we received their letter No. ADM/4523 of 19.1.85 (Flag E). Here it is of interest note that a reading in between the lines of Central Office aforementioned letter of 19.1.85 (Flag E) leaves one with the impression that the Central Office are not so much averse to acceding to the request of Shri Sharma for reasons of rules and principles as for fear of creating a precedent which may force their hands to accommodate other similarly placed employees of the erstwhile Bank of Behar Limited also. There is no other employee of the NBL Limited to be bracketed with Shri Sharma on these grounds.

The Central Office decision was conveyed to Shri Sharma vide our letter No. BL 1712 dated 21.5.85. On receipt of that letter Shri Sharma addressed another

appeal direct to the Chairman on 26.8.85 endorsing a copy thereof to us. The said appeal has however been forwarded to us by the Central Office for necessary action (Flag E).

In his appeal Shri Sharma has while highlighting the material difference between the schemes covering the amalgamation of Bank of Behar Limited and BL Ltd. from that relating to KB Bank Ltd. with SBI in matters concerning the absorption of staff of the respective transferor Banks, tried to underscore the need for not considering his case for grant of pension within the limited and strict confines of fresh recruitment but in the wider spectrum of the terms and conditions governing the service in State Bank of India of his other erstwhile colleagues in NBL Ltd. or for that matter of Bank of Behar as the schemes for amalgamation of the both with SBI were exactly identical. In this connection it is pertinent to mention here that Central Office themselves had conceded in their letter No. ADM/48873 of 8.10.84 and PA/CIR/18 of 30.1.85 that the terms and conditions of amalgamation of KB Bank Limited in regard to the services of its employees are different from those of Behar Limited and National Bank of Lahore Limited. Shri Sharma has also alluded to the peculiar circumstances leading to his appointment rather than the automatic absorption in the Bank and has requested that the same be given due weightage while deciding his case for grant of pension particularly in view of the useful and efficient service rendered to the Bank in recognition of which he was elevated to SMGS IVA.

Having gone through the case dispassionately, we feel that any decision in this case influenced by the fact of fresh recruitment alone to the exclusion of all other facts having direct or indirect bearing on it, will not fit in well with our progressive outlook tinged with human approach. Moreover, during these days of rapidly rising costs and the inadequacy of material resources at the disposal of old, infirm and ailing retired persons Shri Sharma is incidentally badly afflicted with arthritis and can move about only with great difficulty it sounds rather tragic to deny them the pension benefit which in fact is the best and the most sustaining of all terminal benefits, particularly so when the employee(s) concerned had been committed and devoted to the institution and their services had been recognised and appreciated. Shri Sharma has definitely been such a one.

As to the creation of precedent by acceding to the request of Shri Sharma the Bank shall only be creating a lot of goodwill by considering all the deserving cases in Bank of Behar Limited too favourably.

As to the resultant cost factor, taking into account of the amount to be recovered from the concerned employee on account of the excess gratuity paid to them the actual immediate financial strain is not expected to be high in the event of the Bank agreeing to grant pension in a few of such cases for instance Shri Sharma, shall have to refund Rs. 34,757.70 in the event of his request being acceded to, Therefore subject to your approval propose that we may request Central Office that in view of the exalted position Shri Sharma held in the erstwhile NBL Limited the quaint position arising out of it when confronted with the question of

absorption of his services in the Bank, which culminated in his re-appointment and least though not the least, the commendable services rendered by him to the Bank during the period he remained as the Bank's employee, to consider grant of pension to him as a special case in exercise of the powers vested in them in terms of Regulation 52(2)(d) of the SBI General Regulations."

14. On the 22nd of August, 1992, the petitioner made a representation to the Hon"ble Finance Minister and the same reads as under :

"Hoping to be excused for taking this liberty of approaching you for the redressal of my grievances. I submit that I am an old man of 69 years suffering from Osteoarthrosis (both knees) and after putting in service of 13 years in State Bank of India and 25 years in the erstwhile National Bank of Lahore Limited which was amalgamated with State Bank of India on 23.2.1970 have been denied my due right to pension by the State Bank of India on being retired on 31.5.1983. I submit herewith photostats of my representation dated 27.4.1984 to the Chief General Manager/State Bank of India, New Delhi Local Head Office and representation dated 26.8.1985 to the Chairman, State Bank, of India, Central Office, Bombay. I have not so far received any reply to my representation to the Chairman.

Brief facts of the case are :

(i) I joined the National Bank of Lahore Limited in 1945 at the age of 22 years and was holding the post of Secretary in the said Bank when it was amalgamated with State Bank of India on 23rd February, 1970. All the employees of the National Bank of Lahore Limited were absorbed by State Bank of India excepting 12 employees whose names were included in the schedule of amalgamation and their service came to an end on 22 February, 1970. Out of these 12 employees, two employees i.e. myself and Shri R.P. Chopra, General Manager, of the National Bank of Lahore Limited were re-employed by the State Bank of India w.e.f. 23.2.1970 i.e. on the very next date of my services coming to an end in National Bank of Lahore Limited with a view that there should not be any break in my service as in case of other National Bank of Lahore Limited employees absorbed in State Bank of India. It was done merely to circumvent certain technical hurdles in my being fitted appropriately in their salary structure as per the Scheme of Amalgamation. This fact is borne out in paragraph 8 page 3 of the State Bank of India, New Delhi Local Head Office letter No. CO/DRO/NBL/6543 dated 26.10.1984 addressed to their Central Office, Bombay.

(ii) At the time of amalgamation of the National Bank of Lahore Limited with State Bank of India, the State Bank of India decided that only those employees of the National Bank of Lahore Limited should be allowed the facility of pension who were not over 35 years of age as on the date of amalgamation i.e. 23.2.1970. On the basis of this decision, it was agreed that pension benefit will not be extended to me and accordingly in the re-appointment letter dated 21.2.1970 given to me by the State Bank of India, it was stated that pension

benefit will not be extended to me. Subsequently, in 1983, the State Bank of India decided to allow pension benefit to all the employees of National Bank of Lahore Limited absorbed by them who were not more than 35 years of age as on the date of their confirmation in the service of National Bank of Lahore Limited instead of the date of amalgamation i.e. 23.2.1970. As I was only 22 years of age at the time of confirmation in National Bank of Lahore Limited, I am also entitled to the pension benefit as in case of all other employees of National Bank of Lahore Limited absorbed by the State Bank of India. In this connection reference is invited to paragraphs 5, 6 and 7 page 2 of State Bank of India, New Delhi Local Head Office letter No. DO/DRO/NBL/6543 dated 26.10.1984 addressed to their Central Office, Bombay.

(iii) I further submit that in recognition of my merits and good work in the National Bank of Lahore Limited, I was promoted as Secretary of that Bank and similarly after my services having been taken over by the State Bank of India, I was promoted to the 1st Grade of Staff Officers on 1.8.1979. A photostat of D.O. letter dated 31.5.1983 issued to me by the General Manager (Planning), New Delhi/ Local Head Office at the time of my retirement stating that I always well performed by duties is also enclosed for your kind information.

(iv) I am the only person who is being denied the benefit of pension as Shri R.P. Chopra, the other employee who was also re-appointed Along with me, expired on 9.3.1977 while on leave preparatory to retirement from the Bank's service.

(v) I have already offered to the Bank that I will refund Rs. 34,757.70 on account of excess amount of gratuity paid to me on grant of pension benefits to me.

(vi) By virtue of my being a member of State Bank of India Employees' Mutual Welfare Scheme, my wife, in the event of my death, will be entitled to a monthly pension of Rs. 500/- whereas, I as a retired employee who has put in 38 years of sincere service is being denied my due pension during my lifetime.

(vii) It would be clear from letter No. 4528 dated 19.1.1985 of the State Bank of India, Central Office, Bombay to their New Delhi Local Head Office, that they have no valid grounds to refuse/reject my representation for grant of pension benefits but feel reluctant to get approval from the Executive Committee of the Central Board or directly from Central Board despite any case having been recommended strongly twice to them by their New Delhi Local Head Office vide their letter Nos. CD/ DRO/NBL/4226 dated 14.7.1984 and No. CO/DRO/ NBL/6543 dated 26.10.1984.

I would be very much thankful if the State Bank of India, Central Office, Bombay is advised to release my due pension benefits as I am suffering from Arthritis and am unable to move about much.

In view of the Government policy of openness and right to information, I have dared to make reference to the letters written by State Bank of India, New Delhi

Local Head Office to their Central Office, Bombay and by State Bank of India, Central Office, Bombay to their New Delhi Local Head Office."

The petitioner sent reminders to the Hon"ble Finance Minister on 28.6.1993 and 17.8.1993.

15. On the 26th of July, 1995, the petitioner presented the writ petition in this Court. In paragraph 8 of the writ petition, the petitioner has stated :

"That of the time of amalgamation of the National Bank of Lahore with the State Bank of India, it was mentioned in the circular of the State Bank of India that the employees who are above 35 years of age as on the date of amalgamation will not be entitled for pension benefits."

16. Relating to the circular issued on the 28th of June, 1993, in paragraph 9 of the writ petition the petitioner has stated :

"In 1983, the State Bank of India had modified their own scheme and decided to grant pension benefits to those employees of the National Bank of Lahore, who were absorbed by the State Bank of India and who were not more than 35 years of age as on the date of their confirmation in the services of the National Bank of Lahore and the petitioner in the present case was only 22 years of age at the time of his confirmation in the National Bank of Lahore."

17. The case of the petitioner is that for all practical purposes the petitioner was absorbed in the State Bank of India in 1970 but for some reasons given by the State Bank of India that there was no corresponding post in the State Bank of India, the petitioner had to be engaged by the State Bank of India under the heading "re-employment". Under those circumstances, the petitioner, having regard to inequality of bargaining power had to accept and had to work in the State Bank of India. The reason for re-employment was not attributable to any act of omission or commission on the part of the petitioner. It is not the case of the State Bank of India that the petitioner made a request for re-employment. The provisions in the Scheme of Amalgamation would make it clear that it is for the convenience of the State Bank of India such an arrangement was conceived and mentioned in the Scheme of Amalgamation. Therefore, when the petitioner was continuing in the service of the State Bank of India without any break, it cannot be said that there was any re-employment of the petitioner in the State Bank of India for the purpose of considering his claim for the grant of pension.

18. In the counter-affidavit, it is stated :

"That the respondents further state the late Shri K.N. Sharma was working as Secretary with the erstwhile National Bank of Lahore. The respondents state that his services were terminated immediately before amalgamation of the National Bank of Lahore with State Bank of India by letter dated 20.2.1970. The respondents state that by this letter late Shri K.N. Sharma was communicated that he shall cease to be employee of the National Bank of Lahore Limited with effect from 23.2.1970 and, late Shri K.N. Sharma was relieved of his assignment

as Secretary by the date of 22.2.1970 with NBL Limited because his name had been specified in the Schedule annexed to the Amalgamation Scheme duly sanctioned by Central Government exercising powers u/s 45(7) of the Banking Regulation Act.

The respondents state that thus late Shri K.N. Sharma ceased to be an employee of NBL Limited on 23.2.1970 and, Therefore, his name was excluded from the list of employees who were to be absorbed, regularised with the State Bank of India in view of Amalgamation Scheme."

19. The reason for the method adopted by the State Bank of India instead of using the word nomenclature "absorbed" the nomenclature "re-employment" was used by the State Bank of India is mentioned in the counter in the following terms:

"That the respondents further state that late Shri K.N. Sharma's name was included in the list of employees of the NBL Limited who were not to be absorbed in our Bank with the remarks :

"No corresponding rank of status can be offered to him in the Bank."

The respondents state that the abovementioned list was submitted to the Central Office of the respondent on 6.2.1970."

20. It is further stated in the counter:

"That the respondent states that a letter of appointment was subsequently issued to late Shri K.N, Sharma on 21.2.1970 namely two days before the amalgamation.

The respondents state that late Shri K.N. Sharma was re-appointed with the State Bank of India w.e.f. 23.2.1970 in a special grade in terms of Central Office letter dated 18.2.1970.

The respondents state that Shri K.N. Sharma has thus been appointed as a fresh employee with State Bank of India. The respondents submit that late Shri K.N. Sharma thus was not one of the members of NBL Limited staff who were absorbed in service with State Bank of India in terms of Amalgamation Scheme."

21. It is further asserted in the counter:

"The respondent further state that late Shri K.N. Sharma had also admitted his re-employment with the State Bank of India."

22. In the counter, the respondent had referred to State Bank of India Employees" Pension Fund Rules. It is stated in the counter:

"That, the respondents state that after fresh appointment on 23.2.1970 with SBI late Shri K.N. Sharma's case for pension was governed under the provisions of "The State Bank of India Employees" Pension Fund Rules.

The respondents state that the relevant provisions applicable to Shri K.N. Sharma's facts are Rules 7 and 8 and 22 of the SBI Pension Fund Rules.

The respondents state that late Shri K.N. Sharma was not eligible to become member of the pension fund in view of Rule 8(C) of the Pension Fund Rules.

Rule 8:

Save as provided in Rule 25, no employee shall be eligible to become a member of the fund;

(a)

(b),

(c) If he is over 38 years of age or (35 years age in 1970)

(d)

That, the respondents state that late Shri K.N. Sharma was also not entitled for pension under the State Bank of India Employees' Pension Fund Rules on retiring in 1983 under Rule 22 of the above said rules, as he did not have qualifying service to his credit."

23. It is further stated in the counter:

"That, the respondents state that Shri K.N. Sharma retired in the year 1983. The respondents state that in the month of April, 1983 the Central Office of the respondents reviewed its Pension Policy of 1970 with respect to the members of NBL Limited after amalgamation with the State Bank of India.

The respondents state that by the said circular of 1983, Central Office stipulated all former members of NBL staff who were absorbed in State Bank's service and were within 35 years of age at the time of joining service in the erstwhile National Bank of Lahore Limited will be eligible to pension while retiring from the Bank, while in 1970, the State Bank provided that only those members/employees who were below the age of 35 years as on 1.3.1970 would be members of the State Bank Fund Rules.

The respondent state that the above said (Memorandum) policy was circulated through the present Local Head Office of the respondent vide Per. No. 163 of 1983, on 13.6.1983."

24. It is stated in the counter that the petitioner's date of appointment was 23.2.1970 and other absorbed employees, in accordance with the Amalgamation Scheme, were also absorbed on the 23rd of February, 1970. Therefore, the petitioner cannot claim pension.

25. The main point taken by the respondent is that the petitioner was re-employed on 22.3.1970. He does not come within the ambit of SBI Pension Funds Rules and circulars issued by the Bank on 13.6.1983.

26. The learned Counsel for the petitioner, Ms. Geeta Luthra, submitted that having regard to the fact that the petitioner had served the institution for more than 38 years, the petitioner would be entitled to the grant of pension and the word "re-employment" used by the State Bank of India in 1970 was only for its own purposes and it has no legal effect on the service conditions of the petitioner and in law the nomenclature applied by the State Bank of India "re-employment" would not in any way affect the right of the petitioner to get pension. If the State Bank of India intended to deprive the petitioner of his pension on the strength of the "re-employment", it will be wholly void in law, because under the circumstances that prevailed in 1970, the State Bank of India was not at all authorised to treat the employment of the petitioner as fresh appointment and it was clearly illegal.

27. The learned Counsel for the petitioner, Ms. Geeta Luthra, submitted that the circular issued by the State Bank of India on the 13th of June, 1983 prescribing some age-limit is also void in law. The learned Counsel for the petitioner, Mr. Geeta Luthra, submitted that the projection of the SBI Employees Pension Fund Rules against the petitioner is also not authorised in law. According to the learned Counsel for the petitioner, Ms. Geeta Luthra, it is settled law that once an employee has served a Government organisation for more than 38 years, his claim for pension cannot be denied in law and pension is not a payment made ex gratia by the employer. It is earned by the employee by virtue of his service.

28. The learned Counsel for the respondent Mr. Rakesh K. Singh made his submissions with skill and ability. The learned Counsel for the respondent Mr. Rakesh K. Singh submitted that the petitioner as an employee of the National Bank of Lahore was bound by the terms of the Amalgamation Scheme. He submitted that the petitioner had accepted the employment offered to him and he did not challenge the action of the State Bank of India at any time. He further submitted that the petitioner was also fully aware of the circular issued by the State Bank of India on the 13th of June, 1983 and also the SBI Employees' Pension Fund Rules. Therefore, as per the Scheme of Amalgamation and the rules, the petitioner would not be entitled to pension. The learned Counsel for other petitioner, Mr. Rakesh K. Singh also submitted that the petitioner is guilty of laches.

29. Seeking to explain the scope of pension, the learned Counsel for the respondent Mr. Rakesh K. Singh, referred to the following decisions :

1. Shaukat Husain Beg Mirza Vs. State of Uttar Pradesh and Another, .
2. AIR 1969 127 (M.P.) .
3. Deokinandan Prasad Vs. The State of Bihar and Others, .

30. The learned Counsel for the respondent Mr. Rakesh K. Singh, referred to the judgment of the Constitution Bench of the Supreme Court in Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and

Another, .

31. The learned Counsel for the respondent Mr. Rakesh K. Singh, for the proposition that fresh appointees cannot claim the benefit of past services/ referred to the judgment of the Supreme Court in Union of India and others Vs. Keshab Lal Roy and others, . The learned Counsel for the respondent Mr. Rakesh K. Singh, sought to project that the difference between an employee, who was in employment and the effect of absorption, referred to the judgment of the Supreme Court in Tamil Nadu Electricity Board v. R. Veerasamy and Ors." 1999 (3) SC 289 : (1999) 3 SLT 206. The learned Counsel for the respondent Mr. Rakesh K. Singh, submitted that the petitioner was guilty of laches and in support of this, the learned Counsel for the respondent referred to the judgments of the Supreme Court in Durga Prasad Vs. Chief Controller of Imports and Exports, , and in Government of Andhra Pradesh and Others Vs. M.A. Kareem and Others, .

32. The learned Counsel for the respondent Mr. Rakesh K. Singh, also submitted that the parameters of the jurisdiction of this Court under Article 226 have been laid down by the Supreme Court in "Municipal Board, Saharanpur v. Imperial Tobacco of India Limited and Anr." 1998 (9) SC 1 : (1998) 9 SLT 509, and on the facts and circumstances of this case, according to the learned Counsel for the respondent Mr. Rakesh K. Singh, the petitioner has not made out any case for interference.

33. The proposition laid down in the cases referred to by the learned Counsel for the respondent Mr. Rakesh K. Singh, was not disputed by the learned Counsel for the petitioner, Ms. Geeta Luthra. What is to be considered is the applicability of the principles laid down in those cases to the facts of the instant case. The question arises, whether an employer who for its own reasons adopts a particular mode for the purpose of continuing the service of an employee who was in an organisation which was amalgamated with the employer could deny the benefit of the past service to his employee. If there had been a provision in the Amalgamation Scheme that all the employees in the erstwhile organisation would not be entitled to the grant of pension and would be governed by the terms of employment to be offered by the employer, the position would be entirely different.

34. In the instant case, all the employees had been absorbed and it is not disputed, those absorbed employees were taken under pension scheme. The petitioner was denied pension on the ground that he was re-employed. The ground was that the petitioner did not satisfy a particular age on the date of amalgamation and on the date of circular dated 13.6.1983. This was purely on internal arrangement by the State Bank of India and it is not stated that any statutory provisions empower the State Bank of India to act in this fashion. It is clearly an act by the State Bank of India for its own administrative reasons and it had adopted the method as the petitioner could not be offered the corresponding employment in the State Bank of India, or if he was taken into service as an

absorbed employee, he was to be given higher status. It is well settled that an administrative action can be set aside if it is illegal (i) if it contravenes or exceeds the terms of the power which authorised it making of the decision; (ii) if it pursues an object other than that for which the power to make the decision was conferred. The decision taken by the State Bank of India is absolutely unreasonable. An employee cannot be deprived of his legitimate right to claim pension on the ground that he could not be accommodated in the State Bank of India in the corresponding scale. On this ground, the view taken by the State Bank of India became void in law. It is further well settled that any order that is void can be challenged whenever or wherever it is projected. That is laid down by the Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, .

35. The statement of law in H.W.R. Wade Administrative Law 1994 Edition is instructive. The learned author said :

"The Court assumes that Parliament cannot have intended to authorise unreasonable action, which is Therefore ultra virus and void. This is the express basis of the reasoning in many of the cases/"

36. On the question of exercise of discretion, the learned author had quoted Coke's opinion, who said:

".....and notwithstanding the words of the commission give authority to the Commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith, tails discretion discretional confirmation.

37. The learned author further said that in a very similar case in the year 1609 the same doctrine is repeated; and it recurs elsewhere in Coke's works. In 1647 it is laid down that:

"Whosoever a Commissioner or other person hath power given to do a thing at his discretion, it is to be understood of sound discretion, and according to law, and that this Court hath power to redress things otherwise done by them."

38. Explaining the "validity of the principle today", the learned author had said:

"The principle of reasonableness has become one of the most active and conspicuous among the doctrines which have vitalised administrative law in recent years. Although the principle itself is ancient, the cases in which it was invoked were few and far between until in 1968 the Padfield case opened a new era. Today, on the other hand, it appears in reported cases almost every week, and in substantial number of them it is invoked successfully. Its contribution to administrative law on the substantive side is equal to that of the principles of natural justice on the procedural side.

This doctrine is now so often in the mouths of Judges and Counsel that it has acquired a nickname, taken from a case decided twenty years before *Padfield*, the *Wednesbury* case. The reports now are freely sprinkled with expression like "the *Wednesbury* principle", "*Wednesbury* unreasonableness", or "on *Wednesbury* grounds". As Lord Scarman has explained:

"*Wednesbury* principles" is a convenient legal "shorthand" used by Lawyers to refer to the classical review by Lord Greene MR in the *Wednesbury* case of the circumstances in which the Courts will intervene to quash as being illegal the exercise of administrative discretion.

One of the grounds of review, he added, is "unreasonableness in *Wednesbury* sense". In the same case Lord Bridge referred to the exercise of power "unreasonably in what, in current legal jargon, is called the "*Wednesbury*" sense". "*Wednesbury*" is now a common and convenient label indicating the special standard of unreasonableness which has become the criterion for judicial review of administrative discretion. It is explained in that context below, where the key passage from the judgment of Lord Greene MR is set out in full.

In an important *ex cathedra* statement of the grounds for judicial review Lord Diplock preferred the term "irrationality", explaining it as "what can by now be succinctly referred to as *Wednesbury* unreasonableness". But it is questionable whether "irrationality" is a better word. Virtually all administrative decisions are rational in the sense that they are made for intelligible reasons, but the question then is whether they measure up to the legal standard of reasonableness. These are two different things, and for legal purposes they are best differentiated by the established terminology. For the sake of clarity as well as consistency it will be best to employ "unreasonableness" as the key word, and it seems that the Courts are in fact still doing so.

The expression "arbitrary and capricious" is sometimes used as a synonym for "unreasonable"; and in one case this has been transmuted into "frivolous or vexatious" and "capricious and vexatious". But the meaning of all such expressions is necessarily the same, since the true question must always be whether the statutory power has been abused."

39. the learned author had also, quoting Lord Wrenbury, has stated the principle as to how a person is to exercise discretion. The same is as under :

"Lord Wrenbury, dealing with the argument that the Act did not say "such reasonable wages" or "as they reasonably think fit", said that to his mind there was no difference in the meaning, whether those words were in or out. He laid down the law as follows :

"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds, A discretion does not empower a man to do what he likes merely because he is minded to do so he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his

reason, ascertain and follow the course which reason directs. He must act reasonably."

40. The State Bank of India, in exercise of its discretion while formulating the Scheme of Amalgamation, had thought it fit to offer the employment to the petitioner only if he agreed for re-employment basis. That was not authorised and it was not a proper exercise of discretion at all. Under the circumstances of this case, the petitioner cannot be non-suited, in my view, on the ground of laches when the relief was sought to be denied on the basis of an order which is wholly void in law.

41. In view of the above discussion, I am of the view that the petitioner has made out a case for the grant of pension and the State Bank of India is bound to grant him pension. In view of the fact that the petitioner died during the pendency of the writ petition, the widow had come on record and the children of the petitioner have no objection to the grant of the relief of pension and other benefits to the petitioner. The petitioner is declared to be entitled to pension from 1.6.1983 up to 9.9.1995 when the petitioner died and the widow of petitioner Smt. Jai Rani Sharma would be entitled to family pension from 10.9.1995 in accordance with the rules.

42. The respondent is directed to pay arrears of pension and family pension to the petitioner, Smt. Jai Rani Sharma, on or Before the 31st of August, 1999. The respondent shall continue to pay family pension to Smt. Jai Rani Sharma in accordance with law.

43. The writ petition stands allowed.

44. There shall be no order as to costs,