thereafter and make a recommendation to the Government in accordance with the provisions of section 192 of the Act if it accepts the objections and the Government shall further proceed in accordance with law to amend the Scheme if found necessary. We may also point out that it was contended by Shri Mittal, the learned counsel for the petitioners that the objections filed by the predecessors of petitioners in C.W.P. Nos. 4098 of 1977 and 4624 of 1978, were accepted by the Administrator but the said order has not been reflected in the Scheme as the Scheme has not been amended in view of the acceptance of the objections. On the other hand, the learned counsel for the committees contends that the order of the Administrator, Municipal Committee, accepting the objections has been implemented and the Scheme has been amended accordingly. The question whether the order of the Administrator accepting the objections referred to above, has been implemented or not, shall also be gone into by the Committee and if the said order has not been implemented, the Committee shall take steps to implement the order by proposing necessary amendment to the State Government who shall proceed in accordance with law.

(24) It is made clear that the provisions of the Scheme so far as they affect the rights of the petitioners, will not be taken to be final and the said provisions will only become final after the objections filed by the petitioners are considered by the Committees and disposed of. If the objections are rejected, the provisions of the Scheme shall become final and if there is merit in the objections, the same shall be accepted and forwarded to the State Government for amending the Scheme in accordance with law. We order accordingly. The writ petitions stand disposed of with no order as to costs. C.M. Nos. 1985 and 1639 of 1979 in C.W.P. No. 1757 of 1978, have become infructuous and are, therefore, dismissed as such.

N. K. S.

Before J. V. Gupta, J.

CANTONMENT BOARD, AMBALA,—*Appellant*

versus

BERHMA NAND,—*Respondent.*

Second Appeal From Order No. 35 *of* 1979

January 21, 1980.

Cantonments Act (II of 1924)—Section 273(3)—Board terminating the services of an employee—Order of termination unsuccessfully challenged in appeal and revision under the Act—Suit then filed

to challenge the validity of such order—Cause of action for the suit—Whether arises on the passing of the final order under the Act.

Held, that if the cause of action as contemplated under section 273(1) of the Cantonments Act, 1924, is deemed to have arisen on the original order of dismissal, then the statutory remedy of appeal and revision provided under the Act becomes illusory. As a matter of fact, the person feeling aggrieved against the order of dismissal would file appeal and revision under the Act, and thus the original order merges in the subsequent orders passed in appeal or revision. Under the circumstances, the cause of action will be said to have arisen on the date when the final order is passed under the Act, that is, either in appeal or revision. (Para 5)

Second Appeal from the Order of the Court of Shri A. S. Garg, Additional District Judge, Ambala, dated 17th February, 1979, reversing that of Shri U. B. Khanduja, Sub-Judge 1st Class, Ambala Cantt., dated 27th July, 1978, accepting the appeal and remitting the suit to the learned trial Court for its trial on merits and directing the parties to appear before the learned trial court on 2nd March, 1979.

M. R. Agnihotri & V. K. Vashisht, Advocates, *for the Appellants.*

J. L. Gupta & Jagdish Singh, Advocates, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.

(1) The defendant-appellant has filed this appeal against the order of the Additional District Judge, Ambala, dated February 17, 1979, whereby the judgment of the trial Court dismissing the suit has been set aside and the case has been remanded to the trial Court for its trial on merits.

(2) The sole question to be decided in this appeal is whether the suit is within time or not keeping in view the provisions of section 273(3) of the Cantonment Act, 1924 (hereinafter to be referred as the Act). For ready reference, section 273 sub-section (3) may be seen which reads thus:—

> "No suit, such as is described in sub-section (1), shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises."

(3) Admitted facts are that the plaintiff-respondent who was a driver of the Cantonment Board, Ambala, and was working in its sanitation branch, was dismissed from service,—*vide* order, dated May 21, 1974, by a resolution of the Cantonment Board. The plaintiff preferred an appeal with the authorities prescribed in the Cantonment Act which was dismissed on September 21, 1974, and then he preferred a revision in the department which was dismissed on June 4, 1975, and the decision was communicated to him on June 10, 1975. The present suit for declaration that the removal of the plaintiff from the post of driver,—*vide* its resolution No. 9, dated May 21, 1974, was illegal, wrongful, unjust, void and ineffective, was filed on November 12, 1975. In the written statement filed on behalf of the defendant-appellant, a plea was taken that the suit is barred by time as the same was not filed within six months from the date of the original order of dismissal, i.e. May 21, 1974, as contemplated under section 273(3) of the Act. Thus the sole question to be decided is as to when the cause of action arose in the present case. The trial Court took the view that the limit of six months is to be counted from the date of the original order, i.e. May 21, 1974, and thus the suit was held to be time barred and consequently it was dismissed as such. It was also observed by the trial Court that a mere provision in the rules entitling an employee to file an appeal or revision cannot be taken to be creating a bar on the right of the employee to file a suit. In appeal filed on behalf of the plaintiff-respondent, the lower appellate Court has reversed the judgment of the trial Court and took the view that the suit of the plaintiff was within limitation under the general Law of Limitation and is within three years from the date of the dismissal, i.e. May 21, 1974. Consequently, the case was remanded for trial on merits. Feeling aggrieved against this order of remand, the defendant-appellant has come up in second appeal to this Court.

(4) Learned counsel for the appellant has mainly placed reliance on *Sita Ram Goel* v. *The Municipal Board, Kanpur* (1) and *Cantonment Board, Ferozepore Cantt.* v. *Bajrang Singh* (2). In *Sita Ram's case* (supra), the Supreme Court had taken the view

(1) A.I.R. 1958 S.C. 1036.

(2) 1961 P.L.R. 407.

that "the principle that the superior courts may not in their discretion issue the prerogative writs unless the applicant has exhausted all his remedies under the special Act does not apply to a suit." In para 24 thereof it has been observed "that the cause of action in the present case accrued to the appellant the moment the resolution of the Board was communicated to him and that was the date of the commencement of the limitation. The remedy, if any, by way of filing a suit against the Board in respect of his wrongful dismissal was available to him from that date and it was open to him to pursue that remedy within the period of limitation prescribed under section 326 of the Act". These observations do support the contention of the learned counsel for the appellant that the cause of action will be deemed to have accrued on May 21, 1974, and since the suit has not been instituted within six months thereof, the same is time barred under section 273(3) of the Act. As regards *Cantonment Board, Ferozepore Cantt's case* (supra), is concerned, it is not of much help to the appellant. In para 7 thereof it has been observed that "in these circumstances, I feel that the present case is fully governed by sub-section (3) of section 273 of the Cantonment Act and that the period of limitation prescribed for a suit of the present nature is only six months from the date of the accrual of the cause of action which in this case must be taken to have accrued on the 29th of September, 1955 when the order of dismissal was passed. Even if the *terminus-a-quo* was taken as the date of the dismissal of the second appeal on the 3rd January, 1957, the present suit having been filed on the 2nd December, 1958 is hopelessly barred by time." Under these circumstances, the question of *terminus-a-quo* was not decided finally in that case because the suit was already time barred even from the date of the dismissal of the second appeal.

(5) Learned counsel for the respondent has relied upon a judgment of the Gujarat High Court reported as *Moti Lal Sankalchand Jain* v. *The Municipal Corporation of the City of Ahmedabad* (3), in which a similar question had arisen under the Bombay Provincial Municipal Corporation Act, 1945. While dealing with *Sita Ram's case* (supra), it has been observed therein "that the Supreme Court after having considered the arguments advanced on behalf of the parties held that the resolution of the Board dismissing the

(3) 1973 M.C.C. 151.

plaintiff could not be equated with a decree and it, therefore, further held that the doctrine of merger which governs the decrees cannot govern the order of dismissal and the appeal order passed by the appellate Authority against the order of dismissal." According to the learned Judge in *Motilal's case* (supra), "if the doctrine of merger is not applied to cases either the statutory right of appeal will be illusory or the right to file a suit will be defeated. Such a stringent consequence, has not been contemplated by the said section. Such a stringent result can also be avoided by applying the doctrine of merger. The application of doctrine of merger creates greater harmony and ensures better protection to all rights of an aggrieved employee. To the extent to which it ensures better protection to the rights of an aggrieved employee, its applicability is conducive to the rule of law." This conclusion has been arrived at by following a later Supreme Court judgment reported as *Somnath Sahu* v. *The State of Orissa* (4), in which it has been held that the doctrine of merger is equally applicable to the administrative orders as well. Thus, I am in respectful agreement with the observations of the learned Judge. If the cause of action as contemplated under section 273(3) of the Act is deemed to have arisen on the original order of dismissal, i.e. May 21, 1974, then the statutory remedy of appeal and revision provided under the Act becomes illusory. As a matter of fact, the person feeling aggrieved against the order of dismissal would file appeal and revision under the Act and thus the original order merges in the subsequent orders passed in appeal or revision. Under the circumstances, the cause of action will be said to have arisen on the date when the final order was passed under the Act, i.e. either in appeal or in revision. In this view of the matter, the suit filed by the plaintiff-respondent on November 12, 1975, is within six months from the order, dated June 4, 1975, passed in revision. In this view of the matter, the other question that whether the order of dismissal can be said to be an order by the Board in exercise of its power under the Act or not, need not be decided in this appeal.

(6) For the reasons recorded above, this appeal fails and is dismissed. No costs.

N. K. S.

(4) 1965 U.J. (S.C.) 351.