the present case in that the State Government has to form an opinion under section 15 of the Act as to the guilt or otherwise of the member concerned in regard to his having committed misconduct and/or neglect of duty and the consequence flowing that the member is totally debarred in future from seeking the membership of the Market Committee, the present case is a very close parallel to *Ghanshyam Das Gupta's case*. It is on a similar consideration of this very case that Dua, J., sought support of it in *Satya Dev's case*, which, as stated, was a case under section 16(1) of Punjab Act 3 of 1911. In my opinion, *Ghanshyam Das Gupta's* case supports the view that I have taken above with regard to the nature of the proceedings under section 15 of the Act and the consequent order thereon, just as Mahajan, J., has taken a similar view with regard to the proceedings and the consequent order under section 16(1) (e) of Punjab Act 3 of 1911, and Dua, J., has tended to the same view in the case already referred to.

In the view, that I have taken above, I would answer the question before the Full Bench in this manner that as the proceedings under section 15 of the Act for removal of a member of a Market Committee and the consequent order of his removal are quasi-judicial in nature, the order of the State Government does not become illegal because of inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee when there are matters included in it which relate to the conduct of the member as such member and upon which the action taken or order made by the State Government can be sustained. In other words, after ignoring the irrelevant grounds, on the grounds remaining if the action could have been taken by the State Government, then its action cannot be interfered with by this Court in view of the decision of their Lordships in *Bidyabhushan Mahapatra's case*. It is in this manner that I would answer the reference to this Bench.

A. N. GROVER, J.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before Mehar Singh, C.J., Inder Dev Dua and Daya Krishan Mahajan, JJ.

K. R. ERRY,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Writ No. 504 of 1964.

October 25, 1966.

Punjab Civil Services Rules, Volume II—Rules 2.2 and 6.4—Cut in pension—Whether can be imposed without affording an opportunity to the pensioner to show

cause against it—Pensions Act (XII of 1919)—S. 4—Whether bars a petition under Art. 226—Constitution of India.

Held, by majority (Dua and Mahajan, JJ, Mehar Singh, C.J., Contra)—(1) That the right to superannuation pension—including its amount—is a valuable right vesting in a Government servant, and before that right is prejudicially affected, he is entitled to a notice to show-cause against the proposed cut. The fact that a right of appeal has been conferred on an aggrieved Government servant in this respect lends additional support to this view. The right to be heard before a cut is imposed on his pension cannot be denied to a government servant on the ground that an opportunity had already been afforded to him on an earlier occasion for showing cause against the imposition of penalty for a lapse or misconduct on his part as a Government servant. Even if the rules of natural justice were not attracted for showing cause against the service as a whole not being thoroughly satisfactory, the question of the amount of cut would, in any event, be a matter on which the Government servant concerned may justifiably be held entitled to an opportunity of stating his case. Not only is the question of imposition of cut a quasi-judicial function but the determination of the amount of the cut is also a quasi-judicial function of equal importance. The amount of cut may have a far more serious impact on a retired Government servant than the question of its mere imposition. Failure to afford hearing on the question of the amount of cut, and the amount of pension to be left to the pensioner concerned, so that the party affected may explain his side of the problem, can scarcely be considered either fair or reasonable or just.

(2) That a superannuation pension cannot be treated merely as a bounty or to be dependent solely on the sweet will and pleasure of the Government. This conception is contrary to the intendment discernible from the rules and the basic purpose and object of granting pension considered in the background of our constitutional set-up. The right to pension is a right to property and the order depriving a person of his pension partakes of quasi-judicial character. The fact that the cut is imposed at the time of sanctioning the pension does not make any difference in the character of the right to pension.

(3) That section 4 of the Pensions Act does not, as indeed it cannot, by any means override or affect the jurisdiction of the High Court under Article 226 of the Constitution. Remedy under this Article, being constitutional remedy, cannot be barred by a statute for the obvious reason that Constitution is supreme. The Legislature accordingly cannot, except when so authorised by the Constitution, prevent High Court from exercising its writ jurisdiction.

Case referred by the Hon'ble Mr. Justce S. B. Capoor and the Hon'ble Mr. Justice Inder Dev Dua by order, dated 22nd December, 1965 to a full Bench for decision owing to the importance of the question of law involved in the case. The case was finnally decided by the Full Bench consisting of the Hon'ble Mr. Chief

Justice Mehar Singh, the Hon'ble Mr. Justice Inder Dev Dua, and the Hon'ble Mr. Justice D. K. Mahajan, on the 25th October, 1966.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order of direction be issued quashing the order, dated 27th July, 1963, passed by the respondent.

D. N. AWASTHY, ADVOCATE, for the Petitioner.

M. S. PANNU, DEPUTY ADVOCATE-GENERAL for the Respondent.

JUDGMENT OF THE FULL BENCH

DUA, J.—These two writ petitions (C.W. No. 504 of 1964 presented by Shri K. R. Erry and C.W. No. 723 of 1965, presented by Shri Sobhag Rai Mehta), were heard together by a Division Bench consisting of S. B. Capoor, J., and myself and were referred to a larger Bench by one order. C.W. No. 504 of 1964 was initially referred to a larger Bench by Shamsher Bahadur, J., on 27th May, 1965 and C.W. No. 723 of 1965 was directed by the Hon'ble the Chief Justice (Falshaw, C., J.), on 24th November, 1965, to be heard along with C.W. No. 504 of 1964, because the learned counsel for the petitioner had represented that the points arising in the two petitions were identical. This is how these two writ petitions have been placed for hearing before this Bench.

The broad facts of the case of Shri K. R. Erry, (C.W. No. 504 of 1964), are stated in the order of the learned Single Judge and the facts of both the cases, in so far as their broad features are concerned, are given in the order of the Division Bench. I would, however, in a nutshell restate them in essential particulars. The petitioner Shri K. R. Erry, joined as an Assistant Engineer in the P.W.D., Irrigation Branch in the prepartition Punjab in November, 1926. He continued to work in that department as a permanent Assistant Engineer and was promoted in due course as an Executive Engnieer. While posted as Executive Engineer (Designs) in the Central Designs Office, he was asked to prepare a design for the Ghaggar Syphon as also for several other works. The design of the Ghaggar Syphon was completed in 1952, under the supervision and guidance of Shri R. R. Handa, I.S.E., Chief Engineer, Bhakra Canals, and was approved by Shri R. K. Gupta I.S.E., Chief Engineer, who held charge of Director, Central Designs, in addition to his duties. After final approval of the design by the highest authorities, the construction of Ghaggar Syphon was entrusted to Shri A. S. Kalha, I.S.E.,

Superintending Engineer, II Bhakra Main Line Circle in 1953-54. The petitioner was not concerned with the construction of the Syphon at the site. In 1954, Bhakra Canals were opened for the first time. After the Ghaggar Syphon started functioning, it was found that a minor portion of the work in the bed and wing wall of river Ghaggar was damaged. On discovery of this defect, the petitioner as Executive Engineer (Designs) was asked to propose repairs to the damaged work. The petitioner's suggestion in regard to these repairs was approved by the Chief Engineer and was carried out at site by Shri A. S. Kalha. Thereafter, there was no complaint of any kind about this work. About five months after the discovery of the damage, Shri Lehri Singh, Minister of Irrigation, sent commendatory letter to the petitioner on 19th September, 1954, praising his ability and devotion to duty in preparing designs of various intricate works. At the time of discovery of the defect in the Syphon, the Government appointed a Committee of Enquiry consisting of three Chief Engineers presided over by Shri S. D. Khungar, I.S.E. General Manager, Bhakra Dam. After a thorough investigation, this Committee returned a unanimous verdict that the damage was not due to any fault in design and that it was due to faulty construction. After the report of this Committee of Enquiry, the Government proposed to charge-sheet the Engineers responsible for the construction. At that stage, the Irrigation Minister entrusted this matter to a High Powered Commission presided over by Dulat, J., a Judge of this Court. In 1955, the petitioner was promoted from P.S.E. Class II to P.S.E. Class I. This promotion, according to the circular of the Government, completely exonerated the petitioner of any blame or blemish whatever and was considered as a hallmark for his efficiency in service. In 1957, the report of the High Powered Commission was received by the Government in which it was observed that damage to the Ghaggar Syphon was due to faulty design and not due to faulty construction, thereby completely reversing and negativing the conclusion of the Committee of Enquiry consisting of three Chief Engineers. In the meantime, Shri R. R. Handa and Shri R. K. Gupta, who had actively participated in the preparation of the design, had retired and had been given their full pension. Faced with this unhappy situation created by the two conflicting reports, one by technically qualified high officers and the other by a Judge of the High Court, the Government issued a letter of displeasure to the petitioner regarding the faulty design. On receipt of this letter, the petitioner protested and submitted that no explanation had been taken from him before recording this displeasure. The petitioner was thereupon informed by the Chief Engineer, Shri

A. C. Malhotra, I.S.E., that he had consulted the Secretary, Irrigation Department, on telephone and was informed that this note was not by way of punishment and that it will not stand in the way of the petitioner's promotion. Indeed, within a few months of this letter, the petitioner was actually promoted to the rank of officiating Superintending Engineer early in 1958 and was posted as Director of Central Designs. The petitioner had also, since 1954, been earning his annual increments regularly upto the date of his retirement which is indicative of the fact that the petitioner's service was fully approved by the Government. In November, 1958, the petitioner retired from service on reaching the age of superannuation. Shortly after retirement, he was appointed by the Government as a Professor and Head of the Department of Civil Engineering in the Punjab Engineering College, Chandigarh, which post was held by him for about 16 months. During the five years immediately preceding his retirement from service, the petitioner earned about four promotions described by him in paragraph 19 of the writ petition. After retirement, the question of the pension permissible to the petitioner was taken up by the Government and on 29th July, 1963, it was decided to impose a 20 per cent cut in his pension and the cut of Rs. 2,000 in his death-cum-retirement gratuity. It is this order which is challenged in the present proceedings.

In the written statement, it is averred that the construction of a Syphon was commenced in May, 1953, and was completed in May, 1954, at a cost of Rs. 19,20,921. The opening ceremony was fixed for 7th July, 1954 and water was let in the canal for testing purposes on 13th June, 1954. The Syphon was damaged on the night between 16th and 17th of June, 1954. For the rectification and improvement of the original design and restoration of the damage, more than Rs. 7 lacs were spent. Regarding the commendatory letter, it has been averred that the proposal to issue the same to all concerned had been decided before the occurrence of the damage in question. As a result of detailed enquiries, according to the written statement, the damage was found to have been caused because of defective preparation of the design and the petitioner was conveyed strong displeasure of the Government. In regard to the petitioner's promotion to P.S.E., Class I, it is pleaded that this was done on 22nd March, 1954, when the enquiry was still proceeding, but keeping in view the loss suffered by the Government, the petitioner's confirmation in P.S.E. Class I was postponed for one year. He was of course confirmed as Executive Engineer, with effect from 12th May, 1956, but this did not exonerate the petitioner of the blame for his failure to

prepare a correct and safe design. On the representation of Shri A. S. Kalha and in view of the findings of the High Powered Commission the advice given by the Committee of three responsible officers of the Irrigation Branch was not considered to be correct. Of those three officers, Shri R. R. Handa and Shri R. K. Gupta, having since retired, no action could be taken against them and the third officer Shri Khungar had been re-employed as General Manager, Incharge of the Bhakra Dam. The Government, however noted with regret that an officer of Shri Khungar's seniority and calibre should have allowed himself to be influenced by the opinion of his colleagues and should have agreed with them in assigning the damage caused to the Syphon to bad workmanship rather than to defective designing. The matter having become old, it was decided to drop it. The officers responsible for the preparation and approval of the design of the Syphon, however, stood on a different footing altogether and the case of each of the officers was dealt with on its own merits. Shri R. R. Handa, the Chief Engineer, and Shri R. K. Gupta, Director, Central Designs, who had the overall responsibility could not be fixed with the lapse which attached to the officer mainly responsible for defective designing and that officer was the petitioner who, as Executive Engineer, made detailed calculations and prepared the design. Government's strong displeasure based on the findings of the High Powered Commission was, however, conveyed to the petitioner and Shri R. K. Gupta. In the return, it has been admitted that the petitioner was informed that the letter of displeasure was not a form of "censure" and as such there was no occasion to follow the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is added in this connection that the petitioner's representation was rejected by the Government. In paragraph 17 of the return, it is pleaded that "the promotions in the I.B. are made keeping in view the seniority and merit. The merit is adjudged keeping in view the record of service as a whole and not for a particular year." This admission proceeds on to state that the petitioner had been held up at the efficiency bar for a period of one year with future effect as per Government orders, dated 19th December, 1953. Full pension admissible under the rules, according to the return, is not to be granted as a matter of course, nor unless the service rendered has been fully approved. Reference is made to Rule 6.4 of the Punjab Civil Services Rules, Volume II, according to which if the service is not thoroughly satisfactory, the authority sanctioning pension can make such reduction in pension as it thinks proper. It has also been denied that during the last five years of the petitioner's service his work was described as "excellent". The

impugned order, it is averred, is just and has not been passed by way of punishment. The Government has made a fair assessment of the petitioner's service for the purpose of sanctioning pension admissible to him under the Rules. Discrimination and violation of Article 14 of the Constitution has been denied. According to the reply, the case was also carefully examined by the Standing Committee for cuts and pension consisting of the Chief Secretary (Chairman), Finance Secretary, the Administrative Secretary concerned and the Deputy Secretary, General Administration.

It is argued on behalf of the petitioner that the right to pension is a legal right and is a part of the conditions of service. Reduction in pension is accordingly a justiciable matter and the rules of natural justice must be followed during the process imposing the cut. The party to be affected, therefore, must be given a reasonable opportunity of showing cause against the proposed cut. This in short is the main contention and if it prevails, then it would be conclusive, for the writ petition must, in that event, succeed. A corollary which, according to Shri Awasthy, arises from this submission is that in case Rule 6.4 of the Punjab Civil Services Rules, Volume II, (Rules relating to Pensions and Provident Funds) is held to justify reduction in pension without affording opportunity to the party affected, then this rule is arbitrary and deserves to be struck down. The second challenge to the reduction in pension is based on the allegation of *mala fides*.

It is necessary now to turn to the relevant rules on the subject. Rules relating to pensions and provident funds are contained as just noticed, in the Punjab Civil Services Rules, Volume II, (Rules relating to Pensions and Provident Funds) (hereinafter called the Rules). Part I, deals with pensions. Preliminary remarks are contained in Chapter I consisting of two sections: the first one deals with the extent of application and the second with definitions. According to Rule 1.3 in section II, the terms defined in Chapter II of Volume I of these Rules have been given the same meaning and implications when used in Part I, of Volume II. The word "pension" has been defined in Rule 2.45 in Chapter II of Volume I of the P.C.S. Rules. According to this definition, except when the term pension is used in contradistinction to "Gratuity", pension includes Gratuity. Chapter II falls under the heading "Ordinary Pensions" and it incorporates general provisions relating to grant of pensions. Section I described as "General" contains Rules 2.1 and 2.2. According to Rule 2.1, every pension is to be held to have been granted subject

to the conditions contained in Chapter VII of these Rules. Rule 2.2 in my opinion, deserves to be reproduced in extenso because considerable argument from both sides has been centred on this rule:—

"2.2. (a) *Recoveries from Pensions.*—Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the Government on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive.

Note.—A claim against the Government servant may become known and the question of making recovery may arise—

(a) when the calculation of pension is being made and before the pension is actually sanctioned; or

(b) after the pension has been sanctioned.

The claim and the recovery may be one or other of the following categories:—

(1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.

(2) Recovery of other Government dues such as over-issues of pay, allowances or leave salary, or admitted and obvious dues, such as house-rent, Postal Life Insurance premia, outstanding motor car, house building, travelling allowance or other advances.

(3) Recovery of non-Government dues.

1. In cases falling under (a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:—

(i) When an officer's service can be held to have been not thoroughly satisfactory, a reduction in the amount of

pension may be made under the Rule 6.4(b) of this Volume by a competent authority although no direct penal recovery from pension is permisisble.

(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government, such as house-rent, outstanding advances, etc., may not be recovered from pension. In such cases, however the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a Court of law, if necessary.

II. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3) may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under Rule 2.2(a) of this Volume future good conduct is an implied condition of every grant of a pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner occurring before he had retired from service.

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks made under 1(ii) above will also be applicable.

Heads of offices should see that the last pay or leave salary prior to retirement shall not be paid until it is clear that retiring Government servant has no outstanding dues to Government. Sometimes, it may not be practicable to ascertain in time all the outstanding dues, while sometimes dues may exceed the amount of last pay or leave salary. In such cases, it is the duty of the heads of offices (in consultation with Treasury Officers and Accountant-General, Punjab, in the case of Gazetted Officers) to bring promptly to the notice of the Accountant-General, Punjab,

all the outstanding amounts by a separate communication, stating in detail the nature of recovery and why it has not been possible to effect it from last pay or leave salary. The outstanding amounts should also be clearly and completely noted in the last pay certificates in sufficient detail with reference to the previous correspondence with the Accountant-General, Punjab, and if the recovery is to be effected from pension, it should be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to the recovery from his pension has been obtained.

Note.—Although compassionate allowance is of the nature of an *ex-gratia* payment it is really a form of "pension and, therefore, recoveries from it, once it is sanctioned, should be governed by the above orders.

Direct recovery of Government dues from compassionate allowance is not permissible under these orders, but recovery may be made indirectly (before the allowance is sanctioned) by reducing the allowance either permanently or as a temporary measure.

Note.—Strictly speaking under the orders no recovery of amount is permissible from pension but if final recovery has been made it need not be refunded to the pensioner concerned.

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that:—

(1) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment—

(i) shall not be instituted save with the sanction of the Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and in such place or places as the Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(2) Such judicial proceeding, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (1); and

(3) the Public Service Commission shall be consulted before final orders are passed.

Explanation.—For the purposes of this rule—

(1) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date on such date; and

(2) judicial proceedings shall be deemed to have been instituted:—

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted to a criminal Court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or as the case may be an application is made, to civil Court.

"*Note.*—As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under sub-clause (b) should not ordinarily exceed one-third of the pension originally sanctioned, including any amount which may have been commuted. In fixing the amount of pension to be so withheld, regard should be had to the consideration, whether the amount of the pension left to the pensioner in any case should be adequate for his maintenance."

Section II dealing with cases in which claims are inadmissible need not detain us because neither party has made any reference to this Section. Same is the case with Sections III, IV and V. Chapter III deals with "Service, qualifying for Pension". Section 1 in this Chapter dealing with general provisions contains Rules 3.1 to 3.11.

Reference has only been made to Rule 3.8 falling under sub-heading "C.—Beginning of Service". According to this rule, unless it is otherwise provided by special rule or contract, the service of every Government servant begins to qualify for pension when he takes charge of the post to which he is first appointed. The note underneath does not concern us. Section II of this Chapter deals with conditions of qualification. Rule 3.12 under sub-heading "A—General" lays down that the service of a Government servant does not qualify for pension unless :—

(i) the service is under Government;

(ii) the employment is substantive and permanent; and

(iii) the service is paid by the Government.

Reliance has been placed on the following note under this rule:—

"*Note.*—The question whether service in a particular office or department qualifies for pension or not is determined by the rules which were in force at the time such service was rendered; orders subsequently issued declaring the service to be non-qualifying, are not applicable with retrospective effect."

Chapter IV contains rules for "Reckoning of Service for Pension". In this Chapter, reference has only been made to Rule 4.1 for emphasising that Chapter III lays down conditions and limitations under which service in a post qualifies for pension. Chapter V deals with different kinds of pensions and conditions for their grant. Then comes Chapter VI dealing with the amount of pensions. According to Rule 6.1 with which this Chapter begins the amount of pension is determined by length of service as set forth in the succeeding sections of this Chapter. Rule 6.4 on which sole reliance has been placed on behalf of the respondent, deserves to be reproduced *verbatim*:—

"6.4. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

Note 1.—A pension already granted should not be reduced when proof, which was not available at the time of sanctioning the pension, is subsequently given of the pensioner's service not having been thoroughly satisfactory.

Note 2.—This rule does not operate to authorise a reduction of ordinary pension either to nothing or to a nominal amount.

Note 3.—(a) This rule cannot be used directly to effect a penal recovery, but Government will be justified in making proof of a specific instance of fraud or negligence by a Government servant, the ground for a finding that his service has not been thoroughly satisfactory within the meaning of the rule, for the purpose of reducing his pension.

(b) The measure of the reduction in the amount of pension made under the rule should be the extent by which the Government servant's service as a whole has failed to reach a thoroughly satisfactory standard and any attempt to equate the amount of reduction with the amount of loss caused to Government is incorrect.

(c) The rule contemplates permanent reduction in the amount of pension ordinarily admissible and does not admit of the reduction of pension payable in respect of any one particular year.

"*Note* 4.—In case the pension of a Government servant, who has served under more than one Government is reduced under this rule, the benefit of reduction should be given to all the Governments, viz., reduced pension should be allocated in proportion to the total qualifying serviee under each Government as directed in Appendix 4 to Punjab Financial Rules, Volume II.

Note 5.—For the purpose of this rule, 'appointing authority' shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires."

Reverting for a moment to Chapter V, according to Rule 5.27, a superannuation pension is granted to a Government servant entitled or required, by rule, to retire at a particular age. Reference in this connection is made in this rule to Rule 3.26 of Volume I of the P.C.S. Rules. Rule 5.30 directs that each Government servant's case should be taken up when he is approaching the age of superannuation and before the expiry of each extension of service. Rules 5.29 and 5.32(A) have also been referred to for the purpose of supporting the contention on behalf of the petitioner that pension is a matter of right. This is inferred from the use of the expression "entitled to pension" in these rules. Part D of these Rules, which lays down procedure relating to pensions, begins with Chapter IX. Rule 9.1 points out to all authorities dealing with applications for pensions under these rules to bear in mind that delay in the payment of pensions involves peculiar hardship. This rule then proceeds to state:—

> "It is essential to ensure therefore, that a Government servant begins to receive his pension on the date on which it becomes due."

A note underneath this rule lays down that in order to prevent cause for complaint on part of pensioner, it is most important that pension cases should always be given as high a degree of priority as is possible. Rule 9.2 advises the Government servants in their own interest to submit formal applications for pension 12 months in advance of the date of actual or anticipated retirement. According to the proviso to this rule, where the date of retirement cannot be foreseen 12 months in advance, the application should be submitted immediately after such date is settled. This rule, according to a foot-note, is intended to obviate delay in the settlement of claims for pension and to ensure that a Government servant may not retire under the misapprehension that he has earned a pension which is subsequently found to be inadmissible. This note adds that there is no limitation on the period after retirement within which an application for pension must be submitted; but in the absence of special order, the pension applied for after the Government servant has retired begins from the date of application. According to Rule 9.4, questions affecting the pension or pensionable service of the Government servant, which for their decision depend on circumstances known at the time, have to be considered as soon as they arise. Under Rule 9.14, a pension which is certified by the Accountant-General to be clearly and strictly admissible under the rules, shall

be sanctioned by authority competent to sanction the pension under Rule 10.10(a) and it is emphasised in Rule 9.14(2) that the sanctioning authority has the special responsibility of ensuring that orders sanctioning the pension are sent to the Accountant-General in time enough to enable him to issue the pension payment order not later than the date on which the Government servant is due to retire. Rule 10.1 in Chapter X lays down that apart from special orders, a pension, other than a wound or extraordinary pension under Chapter VIII, is payable from the date on which the pensioner ceased to be borne on the establishment, or from the date of his application, whichever is later. The object of the latter alternative is stated to be to prevent unnecessary delay in the submission of applications. It is, however, permissible to relax this rule in this respect by the authority sanctioning the pension when the delay is sufficiently explained.

Some rules of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, contained in Appendix 24 in the P.C.S. Rules, Volume I, Part II, may also be noticed. Rule 10(1)(c) gives a right of appeal to the aggrieved party against an order reducing the maximum amount of ordinary pension or withholding the whole or reducing the maximum amount of additional pension admissible under the rules governing pensions. Under Rule 11, in case of appeal, *inter alia*, against an order under Rule 10, the Appellate Authority shall consider:—

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate; and after such consideration, shall pass such order as it thinks proper.

In this rule, no distinction is drawn between an order reducing pension and other orders imposing other penalties.

Shri Awasthy submits that generally, reduction in pension is effected after giving to the Government servant concerned notice and holding an enquiry. In the present case, an enquiry was held into the cause of the defect in the bed and wing wall of Ghaggar river by three technical men and the petitioner was absolved of all blame. The High Powered Commission presided over by Dulat, J.,

however, did not examine the petitioner and indeed even that report was not made available to him. In any event, it is asserted at the bar that Dulat report did not hold the petitioner guilty of inefficiency.

Reliance on behalf of the petitioner has been placed on a decision by Shamsher Bahadur, J., in *Bhagwant Singh* v. *Union of India* (1) laying down that a right to receive pension is a right of property and a person can be deprived of this right only by authority of law. This decision was affirmed on Letters Patent Appeal by a Bench consisting of my Lord the Chief Justice and S. B. Capoor, J., the judgment having been prepared by the learned Chief Justice. That decision is reported as *Union of India* v. *Bhagwant Singh* (2) and the head-note is in the following terms:—

> "The pension granted to a public servant on his retirement is property within the meaning of Article 31(1) of the Constitution of India and he can only be deprived of it by authority of law. The pension does not cease to be property on the mere denial or cancellation of it. The character of the pension as 'property' cannot possibly undergo such mutation at the whim of a particular person or authority. The order depriving a person of his pension cannot be said to be administrative and is at least quasi-judicial. The pensioner affected is entitled to a hearing before an adverse order depriving him of his pension is passed and if he is not afforded a hearing before the order cancelling his pension is passed, the order is liable to be quashed."

It may be mentioned that in *Bhagwant Singh's case,* the pension had already been granted and was later cancelled in pursuance of some administrative regulations. Reference has then been made to a Bench decision of this Court consisting of Pandit, J., and myself in *S. Gurdip Singh* v. *Union of India* (3). It was observed in this decision that in the case of claim to pension by a retired Government servant, the word "pension" must be given a meaning of periodical payment by a Government to a person in consideration of past services. This periodical payment must be considered so as to stimulate efforts in the performance of duty by Government servant and,

(1) 1962 P.L.R. 804.
(2) I.L.R. (1965)2 Punj. 1.
(3) A.I.R. 1962 Punj. 8.

therefore, in order to achieve this object, this right must not be made to depend on the arbitrary and uncontrolled whim of the authorities. It was added that the law of pensions is basically statutory. The contention that the pension was a bounty depending on the mere sweet will of the authorities was repelled in that case. It may, however, be pointed out that in *Gurdip Singh's case,* the Court was concerned with Army Service Rules in force in the erstwhile Patiala State. The following passage from the judgment in *General Manager, Southern Railway* v. *Rangachari* (4), at p. 40 has also been relied upon for the purpose of showing that the term relating to pension relates to employment and, therefore, is a matter of right:—

> "The other matters relating to employment would inevitably be the provision as to the salary and periodical increments terms as to leave, as to gratuity, as to pension and as to the age of superannuation, These are all matters relating to employment and they are and must be deemed to be included in the expression 'matters relating to employment' in Article 16(1)."

Support is also sought from a passage from the judgment of the Supreme Court in *Moti Ram* v. *N. E. Frontier Railway* (5), at p. 610: That passage reads as under:—

> "In this connection it is necessary to emphasise that the rule-making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311(2). Article 311(2) is intended to afford a sense of security to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by rules framed under Article 309 so as to make the said right either ineffective or illusory."

Reference is made to the *State of Mysore* v. *M. H. Bellary* (6), for fortifying the submission that in case of breach of conditions of service, the aggrieved Government servant can have recourse to the

(4) A.I.R. 1962 S.C. 36.
(5) A.I.R. 1964 S.C. 600.
(6) A.I.R. 1965 S.C. 868.

Court for redress—a view which had already been expressed by the Supreme Court in *State of U. P.* v. *Babu Ram Upadhya* (7).

It has been argued that compliance with the rule of natural justice requiring notice to the Government servant and opportunity of representing his case is implict in this rule. It is emphasised that the very fact that it is a right of property suggests that deprivation of this right, whatever be the extent of deprivation can be justified only after the person to be affected is afforded an opportunity of hearing or showing cause. Reliance for this submission has been sought from a number of decided cases. The first case cited is reported as *Nagendra Nath Bora* v. *Commissioner of Hills Division, etc* (8). This decision reiterates the view of the Supreme Court expressed earlier in The *New Prakash Transport Co. Ltd.*, v. *The New Suwarna Transport Co. Ltd.* (9), that the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice have been contravened should be decided not under any preconceived notion but in the light of the statutory rules and provisions. *Board of High School and Intermediate Education, U. P., Allahabad,* v. *Ghanshyam Das Gupta* (10), has been very strongly pressed into service by Shri Awasthy. In this decision, the principles governing the question as to what constitutes a quasi-judicial act enunciated by S. R. Das, J. (as he then was), in *Province of Bombay* v. *Khushaldas S. Advani.* (11), have been reproduced and it is noticed that those principles have been acted upon by the Supreme Court in several cases. Wanchoo, J., speaking for the Court then proceeded to observe as follows:—

> "Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute

(7) (1961)2 S.C.R. 679.
(8) A.I.R. 1958 S C. 398.
(9) A.I.R. 1957 S.C. 232.
(10)A.I.R. 1962 S.C. 1110.
(11) 1950 S.C.R. 621.

where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively : [*vide* observations of Parker, J., in *R.* v. *Manchester Legal Aid Committee* (12)]."

The Court then proceeded to consider the U.P. Intermediate Education Act (2 of 1961) and the Regulations framed thereunder. It may be pointed out that the Court in that case was concerned with the effect of the order made by the Examinations' Committee on the examinee and after referring to the relevant statutory provisions, the learned Judge spoke thus:—

"Considering, therefore, the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under R. 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though, therefore, there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R. 1(1). We are, therefore, of opinion that the Committee when it exercises its powers under R. 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee."

---

(12) (1952)2 Q.B. 413.

The next decision relied upon is *Associated Cement Companies Ltd.* v. *P. N. Sharma* (13). In this decision, the Court speaking through Gajendragadkar, C.J., approvingly referred to a recent decision of the House of Lords in *Ridge v. Baldwin* (14). The House of Lords in that case exhaustively reviewed the legal position as disclosed from the earliest relevant decisions to the latest decision in *Nakkuda Ali* v. *Jayaratne* (15), Lord Reid dealt with and commented on the decision of the Privy Council in *Nakkuda Ali's case* in the following terms:—

> "The authority chiefly relied on by the Court of appeal in holding that the watch committee were not bound to observe the principles of natural justice was *Nakkuda Ali* v. *Jayaratne* (15). In that case the Controller of Textiles in Ceylon made an order cancelling the appellant's licence to act as a dealer, and the appellant sought to have that order quashed. The Controller acted under a Defence Regulation which empowered him to cancel a licence where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer."

> The Privy Council regarded that as 'imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation. But according to their judgment *certiorari* did not lie, and no other means was suggested whereby the appellant or anyone else in his position could obtain redress even if the controller acted without a shred of evidence. It is quite true that the judgment went on, admittedly unnecessarily, to find that the Controller had reasonable grounds and did observe the principles of natural justice, but the result would have been just the same if he had not. This House is not bound by decisions of the Privy Council, and for my own part nothing short of a decision of this House directly in point would induce me to accept the position that although an enactment expressly requires an official to have reasonable grounds for his decision, our law is so defective that a subject cannot

(13) A.I.R. 1965 S.C. 1595.
(14) 1964 A.C. 40.
(15) L.R. (1951) A.C. 66.

bring up such a decision for review, however, seriously he may be affected and, however, obvious it may be that the official acted in breach of his statutory obligation.

The Judgment proceeds: 'But it does not seem to follow necessarily from this that the controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially? It is not difficult to think of circumstances in which the controller might, in any ordinary sense of the words, have reasonable grounds of belief without having ever confronted the licence-holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the controller is acting judicially or quasi-judicially when he acts under this regulation. If he is not under a duty so to act then it would not be according to law that his decision should be amendable to review and, if necessary, to avoidance by the procedure of *certiorari*.'

I would agree that in this and other Defence Regulation cases the legislature has substituted an obligation not to act without reasonable grounds for the ordinary obligation to afford to the person affected an opportunity to submit his defence. It is not necessary in this case to consider whether by so doing he has deprived the Courts of the power to intervene if the officer acts contrary to his duty. The question in the present case is not whether Parliament substituted a different safeguard for that afforded by natural justice, but whether in the Act of 1882 it excluded the safeguard of natural justice and put nothing in its place.

"So far there is nothing in the judgment of the Privy Council directly relevant to the present case. It is the next paragraph which causes the difficulty and I must quote the crucial passage: 'But the basis of the jurisdiction of the

Courts by way of *certiorari* has been so exhaustively analysed in recent years that individual instances are now only of importance as illustrating a general principle that is beyond dispute. That, principle is most precisely stated in the words of Atkin, L. J., in *Rex* v. *Electricity Commissioners, Ex parte London Electricity Joint Committee Co.* (16), and then follows the passage with which I have already dealt at length and then there follows the quotation from Lord Hewart, which I have already commented on, ending with the words—

'there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially.' And then it is pointed out: 'It is that characteristic that the controller lacks in acting under regulation 62.'

Of course, if it were right to say that Lord Hewart's gloss on Atkin, L.J., stated 'a general principle that is beyond dispute', the rest would follow, But I have given my reasons for holding that it does no such thing, and in my judgment the older cases certainly do not illustrate any such general principle—they contradict it. No case older than 1911 was cited in *Nakkuda's case* on this question and this question was only one of several difficult questions which were argued and decided. So I am forced to the conclusion that this part of the judgment in *Nakkuda's case* was given under a serious misapprehension of the effect of the older authorities and, therefore, cannot be regarded as authoritative."

This decision quite clearly supports the submission made by Shri Awasthy that the authorities were bound to observe the principles of natural justice by informing the petitioner of the grounds on which the cut was sought to be imposed on his pension and by giving him an opportunity of being heard. The counsel has also sought support from a decision of the Judicial Committee of the Privy Council in *Lapointe* v. *L'Association De Bienfaisance, etc.* (17). The head note of this decision is in the following terms:—

"The rules of the respondent police pension society provided that every application for a pension should be fully gone

(16) (1924) 1 K.B. 171.
(17) L.R. (1906) A.C. 535.

into by the board of directors, and in particular that any member entitled thereto, who is dismissed from the police force or is obliged to resign, shall have his case considered by the board and his right thereto determined by a majority. On an application for a pension by the appellant, who had been obliged to resign, the board, without any judicial inquiry into the circumstances, resolved to refuse the claim, 'seeing that he was obliged to tender his resignation':—

Held, in an action by the appellant in effect to compel a due administration of the pension fund, that this resolution was void and of no effect. The tender of resignation gave him the right to appeal to the board, and to have his claim as affected thereby duly considered and determined. It did not by itself forfeit rights acquired by length of service and regular contribution to the pension fund. Case remitted to the Superior Court, with declarations directed to secure to the appellant a due consideration and determination thereof by a differently constituted board."

Lord Macnaghten, speaking for the Board in that case, reproduced certain observations by Sir George Jessal M. R., from his decision in *Russell* v. *Russell* (18), in which he had commented on the statement by Lord Chief Baron in *Wood v. Wood* (19). That passage is as under:—

"It contains a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than judges who have judicial functions to perform which I should have been very glad to have had before me on both those club cases that I recently heard, namely, the case of *Fisher* v. *Keane* (20), and the case of *Labouchere* v. *Earl of Wharncliffe* (21). The passage I mean is this, referring to a committee: 'They are bound in the exercise of their functions by the rule expressed in the

(18) (1880) 14 Ch. D. 471.
(19) (1874) L.R. 9 Ex. 190.
(20) 11 Ch. D. 353.
(21) 13 Ch. D. 346.

maxim '*Audi alteram partem*', that no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals'."

In *Rajinder Kumar* v. *Punjab University* (22), it was observed that one of the elementary principles of "natural justice" is that a man has a right to be heard, *audi alteram partem*, a maxim of utmost moment in our democratic development. This rule, it is stated in that decision, is not excluded merely because the authority making the impugned order may have formed an opinion that the affected person has allegedly been guilty of some fraudulent act. To give every victim a fair hearing is just as much a sound canon of good administration as it is of good legal procedure and nothing is more likely to conduce to just and right decision than the habit of giving a hearing to an affected party. The elements of fair procedure are indispensable in our democratic set-up and ought to be followed in spheres of both legal and administrative justice, for, it is a sound rule of law and of public administration that drastic power may be exercised only with due consideration for those who may suffer. *Jai Narain* v. *District Magistrate* (23), to which also reference has been made deals with section 18 of the Arms Act and lays down that if the District Magistrate cancels the licence under that Act without affording to the licensee an opportunity of showing cause against it, he commits a breach of the first principle of natural justice.

Shri Awasthy has read Annexure 'B' to the writ petition and has submitted by reference thereto that full pension was sanctioned by the Governor and the same conveyed to the petitioner and after this sanction, the Governor imposed the impugned cut. The contention that claim to pension is property is also sought to be supported by way of analogy from *Bombay Dyeing and Manufacturing Co., Ltd.* v. *The State of Bombay* (24). If Rule 6.4 is to be construed as conferring the power to impose a cut on pension without affording a hearing to the person affected, then, according to Shri Awasthy,

(22) A.I.R. 1966 Punj. 269.
(23) A.I.R. 1966 All. 265.
(24) A.I.R. 1958 S.C. 328.

this rule must be struck down as conferring an uncontrolled and arbitrary authority and, therefore, violative of Article 14 of the Constitution. For this submission, he has relied on *Ram Dial* v. *State of Punjab* (25), and it is submitted that the analogy furnished by this decision is close enough to serve as a safe guiding precedent to be followed in the present case. The decision in the case of *Associated Cement Companies Ltd.*, has been pressed into service for supporting the submission that the process of imposing a cut on pension is at least a quasi-judicial process, with the result that a hearing according to the rules of natural justice must be given before an order to a pensioner's prejudice is made. Shri S. K. Jain (counsel for the petitioner in C. W. 723 of 1965) has supplemented Shri Awasthy's submission by citing the following decisions on the contention that the rule of natural justice requiring hearing is attracted in the present case.

Jyoti Pershad v. *Union Territory of Delhi* (26) (head-note 'C'), *G. N. Rao* v. *Andhra Pradesh S.T.R. Corporation* (27), *Harke* v. *Giani Ram and others* (28), and *Satya Dev* v. *State of Punjab* (29). A passing reference has also been made by Shri S. K. Jain, to an unreported Bench decision by Mehar Singh, J. (as he then was) and Shamsher Bahadur, J., in *Harbans Singh* v. *The State of Punjab*, C. W. 240 of 1961, in which reversion of a probationer to his original post, when made as a measure of punishment without affording him a hearing, was held to be violative of Article 311 of the Constitution. Reliance for this view in that decision was placed on a decision of the Supreme Court in *S. Sukhbans Singh* v. *The State of Punjab*, Civil Appeal No. 412 of 1960, decided on 6th April, 1962.

On behalf of the respondent, Shri Pannu has in reply to Shri Awasthy's arguments in *Erry's case* submitted that his service has not been thoroughly satisfactory. He placed reliance on paragraph 17 of the written statement in which it is pleaded that promotions in the I.B. are made keeping in view the seniority and merit and the merit is judged keeping in view the record of service as a whole and not for a particular year. Shri Erry, according to this paragraph had been held up at the efficiency bar for a period of one year with future effect as per order, dated 19th December, 1963. A copy of this

(25) A.I.R. 1965 S.C. 1518.
(26) A.I.R. 1961 S.C. 1602.
(27) A.I.R. 1959 S.C. 308.
(28) I.L.R. (1962) 2 Punj. 74=1962 P.L.R. 213.
(29) I.L.R. (1964)1 Punj. 878=1964 P.L.R. 381.

order is annexed to the written statement as Annexure 'R-1.' This annexure shows that the explanation submitted by Shri K. R. Erry, Executive Engineer (Bhakra Canals) had been fully considered by the Government and it was decided that on merits of his case he was not considered fit to cross the efficiency bar. He was accordingly held up at the efficiency bar at Rs. 1,025 for a period of one year with effect from 22nd March, 1953. It is emphasised that in this connection the Public Service Commission was also consulted. Reference has also been made to paragraph 11 of the written statement in which it was admitted that Shri Erry had been promoted to P.S.E.I. with effect from 22nd March, 1954, when the enquiry was still going on. Keeping in view the loss suffered by the Government, his confirmation in P.S.E.I. was postponed for one year and he was confirmed as Executive Engineer with effect from 12th May, 1956, but this promotion, according to the plea, did not exonerate the petitioner of the blame for his failure to prepare a correct and safe design which he was expected to do. It is submitted on behalf of the petitioner, however, that no one junior to him, was confirmed during this interval. Paragraphs 8, 13, 14 and 21 have also been relied upon by Shri Pannu. The proposal for issuing commendatory letters to all concerned, according to paragraph 8 of the written statement, had been mooted before the occurrence of the damage in question and further at the time of commendatory letter, the responsibility for the damage had not been fixed and it was not considered proper to debar the petitioner of a benefit or appreciation before his fault was determined. After the responsibility of Shri Erry was fixed for the damage caused owing to defective preparation of the design, strong displeasure of the Government was conveyed to him. According to paragraph 13, in view of the findings of the High Powered Committee and on the representation of Shri A. S. Kalha, it was considered that the recommendation of the three officers of the Irrigation Branch was not correct. The Government noted with regret the incorrect opinion of the three responsible officers, but the matter having become old, it was decided to drop it. Shri Erry, however, being responsible for the detailed calculation and preparation of the design was considered to be more to blame. Shri Erry and Shri R. K. Gupta, who were both responsible for this defect and were still in service, were conveyed the Government's strong displeasure. In paragraph 21, sub-paragraph (iii), it has been pleaded that the impugned order is just and has not been passed by way of punishment. A fair assessment of the petitioner's service was made by the Government for the purpose of sanctioning pension admissible to him under the Rules. The arbitrary and vindictive nature of the

order has been denied and it is pleaded that action was taken on fair assessment of the entire service record of the petitioner and no punishment was imposed. The case was accordingly examined by the Standing Committee for cuts on Pension consisting of the Chief Secretary, Finance Secretary, the Administrative Secretary concerned and the Deputy Secretary, General Administration. The report of the Standing Committee, however, has not been attached with the written statement.

After referring to these pleas, Shri Pannu has raised, what may be considered to be a preliminary objection. According to him pension is not a vested right and, therefore, the present writ petition is not competent. He has also sought support from the Pensions Act and has placed particular reliance on section 4 which is in the following terms:—

> "Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the Goverment or any former Government, whatever may have been the consideration for any such pension or grant, and, whatever may have been the nature of the payment, claim or right for which such pension or grant, may have been substituted."

The counsel has also referred to sections 5 and 6 of this Act which prescribe the procedure for claiming pension by the pensioners. A Single Bench decision of the Allahabad High Court in *Shaukat Husain Beg Mirza* v. *State of U.P.* (30) has been cited by Shri Pannu in which it is held that a person cannot claim pension as of right and in any case the right to recover pension is not actionable. The decision of the Supreme Court in *State of Bihar* v. *Abdul Majid* (31) was held to be of no assistance to the petitioner in that case because, according to the learned Judge, the main reason on which the Supreme Court held a Government servant entitled to file a suit for recovery of his salary was the statutory provision of section 60 of the Code of Civil Procedure which renders a salary attachable. That, according to the learned Judge, was not the position with regard to pension. Shri Pannu has also relied on a decision of the

(30) A.I.R. 1959 All. 769.

(31) A.I.R. 1954 S.C. 245.

Privy Council in *Wasif Ali Mirza* v. *Karnani Bank* (32). This decision is obviously irrelevant as is plain from the following observations of the Privy Council:—

> "Before their Lordships the additional point was taken on behalf of the appellant that the rents in question formed part of a political pension and were thus exempt from attachment under head (g) of the enumerated exceptions in section 60(1), Civil P. C. This belated attempt to assimilate the rents to a political pension plainly fails."

In my opinion, section 4, Pensions Act, does not, as indeed it cannot, by any means override or affect the jurisdiction of this Court under Article 226 of the Constitution. Remedy under this Article being constitutional remedy, cannot be barred by a statute for the obvious reason that Constitution is supreme. The Legislature accordingly cannot, except when so authorised by the Constitution, prevent this Court from exercising its writ jurisdiction. It is unnecessary to consider the argument that writ proceedings are a suit and, therefore, are barred by virtue of section 4, Pensions Act, though as at present advised I am unable to persuade myself to hold that writ proceedings are a suit as contemplated by section 4. *Bhagwat Singh* v. *The State of Rajasthan* (33) on which Shri Pannu has placed his reliance for the writ proceedings being a suit does not seem to me to support him. The decision in the *Assessing Authority* v. *Mansa Ram* (34), also seems to me to be of no help to the counsel. *Kapur Singh* v. *Union of India* (35) cited by him is equally unhelpful. The respondent's counsel next argues that the alternative remedy provided by section 5, Pensions Act, is an adequate alternative remedy and this Court should not for this reason go into the merits of the challenge. With this submission as well, I am unable to agree. The cut on the pension having been imposed by the Governor, plainly, there can be little utility in making the claim to the Collector or other authorised officer under section 5 of the Pensions Act. The challenge to the order of the Governor imposing the cut can, if at all, be effectively made only through proceedings under Article 226 of the Constitution in this Court. In any event, I would be disinclined in my discretion to direct the petitioner on the facts and circumstances of this case to seek the alleged

(32) A.I.R. 1931 P.C. 160.
(33) A.I.R. 1964 S.C. 444.
(34) I.L.R. (1965)2 Punj. 143.
(35) A.I.R, 1957 Punj. 173.

alternative remedy under the Pensions Act. The preliminary objection thus fails and is repelled.

Shri Pannu, then contends that pension is a bounty to which the petitioner has no right. The pension in question, says the counsel, is only a superannuation pension which is entirely within the unqualified discretion of the Government, with the result that there is no occasion for affording any hearing to the Government servants concerned before imposing cuts. The counsel has emphasised that the scheme disclosed by the relevant rules negatives, or at least it does not suggest the necessity of a notice before granting pension and fixing the amount. He has also relied on the decision of the Supreme Court in *Moti Ram's case* (*supra*). While reading the passage reproduced earlier, the learned counsel was, however, constrained to accept the petitioner's right to earn pension. The counsel has in this situation pressed the submission that this right to pension is subject to Rule 6.4. The petitioner, according to him, was not entitled to be heard in case of unsatisfactory service. Support for this argument is sought by way of analogy from Rule 2.2 in which also there is no provision as to notice and hearing. The analogy does not seem to me to be complete, but in any case, the question of the scope and effect of Rule 2.2 and the requirement of notice and hearing under that rule may also in a given case pose a similar problem which Rule 6.4 does. Reference to Rule 2.2 thus seems to me to be of little assistance. At one stage the counsel threw a suggestion that pension till sanctioned is only a bounty and it is only after it is sanctioned that a right is conferred on the pensioner. This contention again seems to me to be misconceived. Note 2 under Rule 6.4 plainly lays down that this rule does not operate to authorise the reduction of ordinary pension either to nothing or to nominal amount. This note quite clearly cuts accorss this submission.

The counsel has next laid stress on the argument that cut on the pension is not a penalty because full pension is not to be given as a matter of course for it is not claimable as of right. The counsel has relied for this contention on the argument that clauses (a) and (b) of Rule 6.4 are to be read disjunctively. In my view, whether read conjunctively or disjunctively, this rule does not support the submission that grant of pension is a matter of arbitrary discretion with which the pensioner is wholly unconcerned and, therefore, he need not be asked to explain the unsatisfactory nature of his service for the purpose of pension including its quantum. Shri Pannu has referred to the cases cited on behalf of the petitioner and has

attempted to distinguish them. In regard to the decision in the case of *Nagendra Nath Bora,* he has submitted that this was a case dealing with the Eastern Bengal and Assam Excise Act and the distinguishing feature lies in the rules framed under that Act. The point of distinction in the case of *G. N. Rao,* according to the counsel, lies in the existence of rules framed under the Motor Vehicles Act which were held to impose a duty on the State Government to decide and act judicially in approving or modifying the scheme proposed by the Transport Undertaking. In the case of *Associated Cement Companies Ltd.* v. *P. N. Sharma* (*supra*), according to Shri Pannu, it was held that the adjudicating power conferred on the State Government was a part of the State's judicial power. Commenting on the decision in the case of *Board of High School and Intermediate Education,* Shri Pannu has emphasised that there must be a recognised penalty in order to attract the rule of law laid down in this decision. Regarding *Shri Bhagwan* v. *Ram Chand* (36), on which also the petitioner has placed reliance, Shri Pannu points out that that was a case of eviction under the U.P. (Temporary) Control of Rent and Eviction Act of 1947 and naturally, therefore, the District Magistrate, the Commissioner and the State Government were, in view of the matter entrusted to them under the Act, held to perform their duties in a quasi-judicial manner. Shri Pannu has also sought to distinguish the Supreme Court decision in the case of *Ram Dial* by pointing out that there indiscrimination is writ, large on the face of the statute, when sections 16 and 14 of the Punjab Municipal Act of 1911 are properly scrutinised.

In support of the validity of Rule 6.4, Shri Pannu has relied on a decision of the Supreme Court in the *High Court, Calcutta* v. *A. K. Roy* (37). He has also sought support from this decision for the submission that just as the power vesting in the High Court under Article 235 of the Constitution is not justiciable, similarly the power of the Government in the present case to impose a cut on pension is not justiciable and it is open to the Government to make suitable orders in cases which in its opinion, require imposition of cut on the ground of the service not being thoroughly satisfactory. Reliance has also been placed on *Champaklal Chimanlal Shah* v. *The Union of India* (38) in which rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, giving power to the Government to terminate

(36) A.I.R. 1965 S.C. 1767.
(37) A.I.R. 1964 S.C. 1704.
(38) A.I.R. 1964 S.C. 1854.

the services of the temporary Government servant by giving him one month's notice or on payment of one month's pay in lieu of notice or such shorter or longer notice or on payment in lieu thereof as may be agreed to between the Government and the employee concerned, was held to be valid and not hit by Article 16 of the Constitution.

Shri Pannu has further relied on a Single Bench decision of this Court in *Gurdial Singh Bahia* v. *The State of Punjab*, C.W. 1093 of 1959 decided by Bishan Narain, J., on 16th November, 1960, in which reduction in the pension without giving a show-cause notice to the retired Government servant concerned was upheld and the challenge on the ground of violation of rules of natural justice was negatived, it being held that the Government was under no obligation to hold enquiry. That case was, of a Tehsildar from the erstwhile State of Pepsu, but the rule construed by the learned Single Judge was similar to the one with which we are concerned in the present case. A Letters Patent Appeal against this decision was dismissed *in limine*.

The decision forcefully relied upon by Shri Pannu is reported as *M. Narasimhachar* v. *The State of Mysore* (39). In that case, the appellant before the Supreme Court, who was in the service of the Mysore State as Manager of the Government Reserve Foodgrains Depot, was suspended in December, 1952 and several charges were framed against him in April, 1953; a large number of charges were held proved and on 30th December, 1954, he was given a notice to show cause why he should not be compulsorily retired from service, why the period of suspension should not be treated as such leave to which he might be entitled and why the leave allowances due to him, his insurance amount and 50 per cent of his pension should not be adjusted towards the amount due from him on account of shortage of gunny bags valued at Rs. 5,215. An explanation was furnished by the Government servant concerned but in the meantime he attained the age of 55 years. The Government thereupon passed the following order on 18th March, 1955:—

> "(1) That Shri M. Narasimhachar be retired from service from the date on which he attained superannuation and granted under Article 302(b) of the Mysore Services Regulations (hereinafter referred to as Regulations), a reduced pension

(39) A.I.R. 1960 S.C. 247.

of two-thirds the amount to which he would ordinarily be entitled in view of the irregularities committed by him.

(2) That the period of suspension be treated as leave to which he is entitled.

(3) That the cost of 10,430 gunny bags found short be recovered from him at the rate of eight annas per bag.

(4) That the leave allowances due to him, his insurance amount and death-cum-gratuity amount, if any, be adjusted towards the amount due to him.

(5) That the balance after adjusting the leave allowances, insurance amount and death-cum-gratuity amount, if any, be recovered in monthly instalments by deducting 50 per cent of the pension as ordered in (1) above".

This order was unsuccessfully challenged by means of a writ petition in the Mysore High Court and on special leave appeal to the Supreme Court, the contention assailing the reduction of pension was dealt with in the following words:—

"Next the appellant contends that as his pension has been reduced to two-thirds, he was entitled to notice in view of the provision of Article 311(2) of the Constitution, before the Government decided to inflict that punishment on him and that this was not done in the notice, dated 30th December, 1954. It is enough to say that this contention is also baseless. Articles 311(2) does not deal with the question of pension at all; it deals with three situations, namely, (i) dismissal, (ii) removal and (iii) reduction in rank. The appellant says that the reduction in pension is equivalent to reduction in rank. All that we need say is that reduction in rank applies to a case of a public servant, who is expected to serve after the reduction. It has nothing to do with reduction of pension, which is specifically provided for in Article 302 of the Regulations. That article says that if the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a Note under this article, which

says that the full pension admissible under the Regulations is not to be given as a matter of course, but rather to be treated as a matter of distinction. It was under this article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being a matter of discretion with the Government, it cannot, therefore, be said that it committed any breach of the Regulations in reducing the pension of the appellant".

It is very forcefully argued by Shri Pannu, that this decision in clear terms lays down that pension is not a matter of right and that it is purely a matter of discretion clothing the Government with a power whether or not to grant a pension and also as to how much amount to grant.

Looking at the relevant Rules as a whole (the important ones have already been reproduced by me earlier) I, for my part, find it somewhat difficult to hold that pension is treated in them as a mere matter of bounty. The exhaustive manner in which the subject of pensions is dealt with in these rules, reflecting as it does, deep anxiety felt by the rule-making authority on this point does seem to me, to a considerable extent, to derogate from such an intendment. So does, in my opinion, the commonly understood purpose and object of granting pensions to Government servants on their retirement. To treat a superannuation pension merely as a bounty or to be dependent solely on the sweet will and pleasure of the Government would seem to be contrary to the intendment discernible from the rules and the basic purpose and object of granting pensions considered in the background of our constitutional set-up. It is noteworthy that in Rule 9.1 the "peculiar hardship" in the delay in the payment of pensions has been very strongly impressed on the authorities dealing with applications for pensions. Delay in the payment of pensions, according to the Note underneath this Rule, may legitimately give rise to cause for complaint on the part of the pensioner concerned. The view that it is a hardship seems to me to have been inspired by the fact that a pensioner has a right to begin to receive the pension on retirement with much the same regularity as he used to receive his salary and it is considered as a matter of paramount importance that every effort should be made to avoid the gap between the payment of salary during service and payment of pension on retirement. This would clearly not be the position if pension were a matter of mere bounty depending on pure discretion of the Government. In my opinion, much the same

considerations would apply to the question of the amount of pension to be paid to a Government servant on retirement. The note beneath Rule 2.2 emphasising the importance of the adequacy of the amount of pension left after the cut for the pensioner's maintenance is also instructive in this respect. The judicial decisions cited at the bar have been appropriately noticed earlier and without referring to them again, I must say that I find myself in agreement with the general approach to the question of pensions adopted by, and the broad view expressed in, the Bench decision on Letters Patent Appeal *in the case of Bhagwant Singh,* agreeing with the views of the learned Single Judge, that the right to pension is a right to property and the order depriving a person of his pension partakes of quasi-judicial character. Nothing urged at the bar has induced me to differ from that view and indeed I had myself expressed views on somewhat similar lines on an earlier occasion. The fact that the cut is imposed at the time of sanctioning the pension does not appear to me to make any difference in the character of the right to pension. For my part, I am unable to find any sound and rational principle in support of a distinction based on this factor and indeed none has been seriously stressed at the bar.

This brings me to the decision of the Supreme Court in the case of *M. Narasimhachar* on which Bishan Narain, J., had also relied in the unreported case of *Gurdial Singh Bahia.* Now we have not been able to get hold of the rules which concerned the Court in the case of *M. Narasimhachar.* The respondent's counsel has submitted that the language of Article 302(b) of the Mysore Service Regulations which concerned the Court in that case is similar to the language in Rule 6.4 which concerns us and it is hardly necessary for us, says he, to concern ourselves with the other Regulations for finding out their scheme. The right to pension under the Rules, according to Shri Pannu, must according to that precedent be held to be a matter of distinction and discretion requiring no notice or hearing to the Government servant concerned before imposing a cut on his pension.

I have devoted my most anxious and serious thought to this argument, but I regret my inability to sustain it. In the case of *Narasimhachar* the Government servant concerned claimed that reduction of pension was covered by Article 311(2) of the Constitution and this claim was negatived. In this connection, reference was made to Article 302 of the Mysore Services Regulations and it was pointed out that in that Article it was expressly provided that full

pension was "rather to be treated a matter of disinction" and reduction of pension under that Regulation being a matter of discretion, the Government had committed no breach of the Mysore Regulations in doing so. It is strongly emphasised by Shri Pannu, that the law declared by the Supreme Court is binding on all Courts within the territory of India and the Supreme Court having declared that full pension is a matter of distinction and reduction of pension a matter of discretion, the petitioner before us must be held to possess no right of opportunity of showing cause against the reduction of his pension. The law declared by the Supreme Court is indisputably the law of the land and binding on all the Courts in our Republic, but the question is: has the Supreme Court declared that the provisions as to superannuation pension within the contemplation of the Rules with which we are concerned confer no right on the Government servant, and being only a matter of distinction the grant of pension as also its amount are matters which the Government can determine in its absolute discretion with which the Government servant to be affected is wholly unconcerned and has, therefore, legally no say in its determination? I am unable to construe the Supreme Court decision as suggested by the respondent and as at present advised, I am inclined to take the view that the right to superannuation pension—including its amount—is a valuable right vesting in a Government servant, and before that right is prejudicially affected, he is entitled to a notice to show cause against the proposed cut: such appears to me to be the scheme of the Rules read as a whole. The fact that a right of appeal has been conferred on an aggrieved Government servant in this respect would seem to lend additional support to this view. I do not find it easy on any rational ground to deny generally speaking to an aggrieved party a right of hearing before the original authority in a cause in which he is given the right of appeal.

It is not the respondent's case that Shri Erry had been given any opportunity of hearing before his pension was reduced. In this connection it is noteworthy that when displeasure of the Government was conveyed to him it was represented that it was not by way of punishment and would not stand in the way of his promotion. It is admitted in the written statement that the petitioner was informed that the letter of displeasure was not a form of censure and as such there was no occasion to follow the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952.

The learned counsel for the petitioner throughout represented that we should look at the record, because the writ of *certiorari*, as

laid down by the Supreme Court in *Messrs. Ghaio Mal and sons* v. *State of Delhi* (40) goes to the record, and see that there is no other ground on which the petitioner's pension has been reduced and that the only ground on which action has been taken is the finding of the High Powered Commission. It has been emphasised that the petitioner was never examined by the High Powered Commission and if at all, there are some observations in the report of that Commission against the petitioner which is not admitted, they cannot bind him, and indeed it is strongly pressed that those observations having been made behind the petitioner's back, it is an additional reason why in fairness the petitioner should have been afforded an opportunity of placing his point of view before his pension was reduced. In this connection reference has been made by the learned counsel to *Amalendu* v. *District Traffic Superintendent* (41.) This Bench has of course not had the privilege of seeing the report of the High Powered Commission and the respondent has not cared to enable us to express any opinion on the contents of the report in so far as they may be relevant for dealing with the petitioner's submission in the present case. But he that as it may, since it is not the respondent's case that the petitioner was afforded an opportunity of representing his case before his pension was reduced, I need not say anything on the question of non-availability of the record before us.

In regard to the allegations of *mala fides*, Shri Awasthy has submitted that it was only when the Public Accounts Committee created some trouble on the question of damage to the Syphon that the then Chief Minister, late Shri Partap Singh Kairon, decided to impose a cut on the amount of ordinary pension admissible to the petitioner under the Rules. This, according to the learned counsel, constitutes *mala fides* vitiating the cut. For this purpose also, the counsel has requested us to look at the record. In the writ petition, however, I find that the plea of *mala fides*, as contained in paragraph 21 clause (v) is expressed in these words:—

> "The order is demonstrably *mala fide*, because it is not only arbitrary, verging on the vindictive, but sadistic as it is founded on the pernicious principle that if a fault has occurred, somebody must be punished."

---

(40) A.I.R. 1959 S.C. 65.
(41) A.I.R. 1960 S.C. 992.

On the existing material, no case of *mala fides* seems to me to have been made out and nothing more need be said in this connection.

In view of the foregoing discussion, this writ petition should, in my opinion, succeed and allowing the same I quash the impugned order.

Dealing with the connected writ petition of Shri Sobhag Rai Mehta (C.W. 723 of 1965), it is unnecessary to deal with the legal position which I have considered at length in the case of Shri Erry. Shri Sobhag Rai Mehta, according to his writ petition, joined the Punjab Irrigation Department as a Temporary Engineer on 1st September, 1939. After an approved and satisfactory service of seven years, he was promoted and confirmed in P.S.E. Class II on 1st September, 1946 and promoted to Class P.S.E.I. on 1st September, 1949, superseding about a dozen officers. Again on 1st September, 1951, the petitioner was promoted as an Executive Engineer in P.S.E. Class I. He was confirmed as an Executive Engineer in P.S.E. Class I, with effect from 1st September, 1956. On this date, he was serving in the grade of Rs. 625—40—1,025/50—1,275. He states to have crossed the efficiency bar at a stage when he was drawing Rs. 525 and also at a stage when he was drawing Rs. 685. This according to him, shows his good and satisfactory record of service. In view of his commendable and good service-record, he got the selection post of the Superintending Engineer, with effect from 12th March, 1959. During his tenure of service, according to his averments, he got rapid promotions and drew the permissible salaries with all the increments as and when they fell due without any objection. He attained the age of superannuation on 12th December, 1960 and was allowed to draw anticipatory pension in the sum of Rs. 190 per mensem and Rs. 6,158 as death-cum-retirement gratuity. He was allowed to draw this anticipatory pension pending calculation of full pension and gratuity permissible to him. On 4th July, 1964, the Governor of Punjab sanctioned the grant of Rs. 179.65 per mensem as pension imposing a cut of 15 per cent both in respect of pension and gratuity under Rules 5.7 and 6.4 respectively.

In the return it is pleaded that Sobhag Rai Mehta, was reverted as S.D.O. on 19th June, 1949, because he was declared unsuitable for promotion by the Punjab Public Service Commission. He was again promoted as officiating Executive Engineer on 2nd September, 1951 and confirmed as Executive Engineer, with effect from 1st September, 1956. The petitioner was promoted as officiating Superintending Engineer, with effect from 12th March, 1959 and it is not

disputed that he earned annual increment in Superintending Engineer's scale on 12th March, 1960, which is allowed, so proceeds the return, as a matter of course,—*vide* Rule 4.7 of the Punjab Civil Services Rules, Volume I, Part I. It is denied that the petitioner was promoted in view of the commendation and good service record and it is pointed out that certain officers junior to him in P.S.E. Class I had been selected as officiating Superintending Engineers earlier than him. The petitioner is also stated to have been superseded in the matter of promotion to P.S.E. Class II on several occasions. He was also involved in certain adverse cases of P.A.C. and financial irregularities and pending completion of the enquiries in those cases, he was allowed anticipatory payment as a measure of interim relief primarily with the object of saving him from undue hardship. The record of service of the petitioner has been pleaded not to have been throughout commendable. The legal pleas on the basis of section 4, Pensions Act, and that the Government is the sole judge need not be noticed. I also consider it unnecessary to refer to the petitioner's rejoinder, dated 5th November, 1965 and the further affidavit, dated 18th March, 1966 on behalf of the State because they are mainly concerned with the merits on the facts which I do not think is the function of this Court to go into.

In this case also it is not disputed that no notice was given to the petitioner to show cause against the cut and its amount. It is argued on behalf of the respondent that this petitioner has had the opportunity of showing cause against the action taken earlier during the course of his service by way of punishment and, therefore, If those punishments cannot be questioned by the petitioner at this stage, he should not be allowed to raise the plea of want of opportunity of showing cause against the cut to be imposed on his pension at the time of retirement, because there can be no doubt that his service has not been thoroughly satisfactory. It appears to me, however, that once it is held that a Government servant is entitled to a notice before a cut is imposed on his pension, it would require a very strong case to deny him that right on the ground that an opportunity has already been afforded to him on an earlier occasion for showing cause against the imposition of penalty for a lapse or misconduct on his part as a Government servant. Even if the rule of natural justice were not attracted for showing cause against the service as a whole not being thoroughly satisfactory, the question of the amount of cut would, in any event, be a matter on which, in my opinion, the Government servant concerned may justifiably be held entitled to an opportunity of stating his case. Not only is the question of imposition of cut a quasi-judicial function but the determination of the

amount of the cut is in my view, also quasi-judicial function of equal importance. The amount of cut, it may be remembered, may have a far more serious impact on a retired Government servant than the question of its mere imposition. The rule of natural justice requiring hearing appears to me to operate in the cases of both the petitioners before us without distinction, for, this rule speaks with the same voice when there is a breach of the recognised doctrine of opportunity to show cause. The suggestion that there is no manifest injustice calling for interference by this Court is in view of the foregoing discussion, unavailing and has not commended itself to me: failure to afford hearing on the question of the amount of cut, and the amount of pension to be left to the pensioner concerned, so that the party affected may explain his side of the problem, can scarcely be considered either fair or reasonable or just.

This petition also accordingly succeeds and allowing the same, I quash the impugned order.

I may make it clear that it would still be open to the Government to make suitable orders in accordance with law after giving the requisite opportunity to the two petitioners to make their representations, if any. Here, I may point out that the direction contained in Rule 9.1 giving High degree of priority to the decision of pension cases is meant to be observed both in letter and spirit and its importance must not be minimised. Undue delay in the disposal of such cases not only results in great hardship but it may also have other consequences on the services generally, which deserve to be avoided.

As observed earlier, both these writ petitions succeed, but in the peculiar circumstances, the parties are left to bear their own costs.

MEHAR SINGH, C.J.—I have had the benefit of the judgment prepared by my learned brother, Dua, J. The facts of the two cases are completely set out in his judgment and need not be restated. The reason why I find myself unable to agree with the conclusion reached by my learned brother is that I am unable to distinguish the case of *M. Narasimhachar* v. *The State of Mysore* (39) from the facts of the present two petitions.

In the case of either petitioner, at the time of his retirement, cut has been applied to his pension under rule 6.4 of the Punjab Civil Services Rules, Volume II, 1960, Edition. Leaving out the notes to

the rule, which do not affect the question involved in these petitions, the main body of the rule reads:—

> "6.4(a) The full pension admissible under the rules is not to be given as a matter of course or unless the service rendered has been fully approved.
>
> (b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper."

In *Narasimhachar's case* the parallel rule was article 302 of the Mysore Services Regulations, and I reproduce below the content of that article as given in the judgment of their Lordships:—

> "That article says that if the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a Note under this article, which says that the full pension admissible under the Regulations is not to be given as a matter of course, but rather to be treated as a matter of distinction."

The main body of article 302 of the Mysore, Services Regulations is exactly the same as rule 6.4(b) of the Punjab Civil Services Rules, Volume II, and what is Note to article 302 of the Mysore Regulations is rule 6.4(a) of the Punjab Rules, with just this modification that in article 302 of the Mysore Regulations the phraseology used is that full pension is admissible not as a matter of course, but rather to be treated as a matter of distinction whereas in rule 6.4(a) of the Punjab Rules the phraseology used is that it is not to be given as a matter of course, or unless the service rendered has been really approved. To my mind, when these provisions of the Mysore Regulations and the Punjab Rules are considered side by side, there is no material difference in the substance of the two whether the word used is 'distinction' or 'approved'. This is only a manner of statement that it is a service approved or a service of distinction which merits full pension. The use of those two words does not create any distinction whatsoever and, to my mind, in substance, article 302 of the Mysore Regulations is exactly the same as rule 6.4 of the Punjab Rules.

In *Narasimhachar's case* a regular enquiry on given charges was held against the Government servant. Charges were held proved. A show-cause notice was given why the Government servant should not be compulsorily retired from service, why the period of his suspension should not be treated as such leave to which he might be entitled, and why the leave allowances due to him, his insurance

amount and 50 per cent of his pension should not be adjusted towards the amount due from him on account of the shortage of gunny bags valued at Rs. 5,215. After reply to the show-cause notice by him, because he had by that time attained the age of 55 years, the Mysore State Government proceeded to make an order dealing with five matters; and the first of those matters is relevant here. It is this:—

> "That Shri M. Narasimhachar, be retired from service from the date on which he attained superannuation and granted under Article 302(b) of the Mysore Services Regulations (hereinafter referred to as Regulations), a reduced pension of two-thirds the amount to which he would ordinarily be entitled in view of the irregularities committed by him."

In a petition under Article 226 of the Constitution the Government servant concerned urged one of the grounds in regard to the order made against him, including the matter that has been reproduced above, which as stated in the judgment of their Lordships, is this—

> "He also contended that the order of the Government reducing his pension to two-thirds of that to which he would be ordinarily entitled was invalid as it was not mentioned in the notice given to him on 30th December, 1954.....".

The show-cause notice was, dated December 30, 1954. The Mysore High Court dismissed the petition. The case then came up in special leave to the Supreme Court. After repelling the argument on behalf of the appellant, the Government servant, in that case that the part of the order reducing his pension by two-thirds could not be sustained because notice in view of the provisions of Article 311(2) was not given to him before that punishment was inflicted on him, and that, in any case, the reduction in pension amounted to reduction in rank, their Lordships proceeded to observe in reference to article 302 of the Mysore Services Regulations:—

> "That article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a Note under this article, which says that the full pension admissible under the Regulations is not to be given as a matter of course, but rather to be treated as a matter of distinction. It was under this article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being matter of discretion

with the Government, it cannot, therefore, be said that it committed any breach of the Regulations in reducing the pension of the appellant."

No doubt, the argument that was advanced before the Mysore High Court that the order of the Government reducing the pension to two-thirds was invalid as it was not mentioned in the show-cause notice, was not restated before the Supreme Court, but this matter is specifically referred to in the judgment of their Lordships and was present to their mind when the observation as above was made. Their Lordships did not repel the argument in regard to the invalidity of the order reducing the pension on the ground that there had been a full-fledged enquiry of stated charges with findings by the Enquiry Officer against the Government servant against which the latter had had every opportunity to show-cause, but their Lordships proceeded to reject the argument merely on the ground that article 302 of the Mysore Services Regulations had been complied with because under that article the Government had acted in exercise of discretion and it, in doing so, committed no breach of it. This is the only ground on which the order reducing the pension in that case to two-thirds was upheld by their Lordships. As has already been said, in the present two petitions, the position is exactly the same. The orders of the Punjab State Government reducing the pension of each one of the two petitioners is in accordance with rule 6.4 of the Punjab Civil Services Rules, Volume II, and there has been no breach of that rule. So at least to me there appears to be no distinction whatsoever between *Narasimhachar's case* and the present cases.

It is conceivable that the orders of the Punjab State Government may have been open to attack if the same were based on no material whatsoever. This, however, is not the case. In so far as Civil Writ No. 504 of 1964 of Mr. K. R. Erry, is concerned, the basis on which the order proceeds is the conclusion of the High-powered Commission presided over by a Judge of this Court which remarked that the design of the Ghaggar Syphon was defective and, therefore, resulted in the damage to the syphon. The damage was ultimately repaired at a cost of something over seven lacs of rupees. In the preparation and making of the design Mr. K. R. Erry, as Executive Engineer (Designs) in the Central Designs Office was responsible, though the design was supervised and approved by his superiors as well. No doubt in this matter the High-powered Commisison did not hear Mr. K. R. Erry and the State Government has not asked him to explain this by a show-cause notice before reducing his

pension, but, if I read *Narasimhachar's case* right, no such opportunity is to be given under rule 6.4 at the time of the reduction in pension provided the service is not found satisfactory as a whole or is not approved. If there is material as in this case there is, it is for the authority deciding a matter like this to give a decision whether or not to proceed under that rule and to what measure the cut should be applied. This Court cannot substitute its own opinion for the decision of such an authority. In Civil Writ No. 723 of 1965, the case of Mr. Sobhag Rai Mehta, is no better than that of Mr. K. R. Erry. He too was an engineer having been appointed temporary in that capacity in 1939. By 1945, he had been superseded by about eight juniors, and in 1949, after having been given chance as an officiating Executive Engineer, he was reverted to the position of Sub-Divisional Officer as he was declared unsuitable for promotion by the Punjab Public Service Commission. In 1958, he was again superseded by five of his juniors, and he also attracted adverse comments from the Public Accounts Committee for financial irregularities. His service was, therefore, found not satisfactory on the whole and not a completely approved service. On this material it was open to the Punjab State Government to reach the conclusion that it has, and, as has been stated, it is not for this Court to substitute its opinion for that decision. So neither is a case in which the order of reduction in pension proceeds on no material.

It is in view of the decision in *Narasimhachar case* that, as I have already said, I find myself unable to agree with the views and conclusion reached by my learned brother, Dua J., I would, therefore, dismiss these petitions but make no order in regard to costs.

MAHAJAN, J.—I have carefully gone through the judgment prepared by my Lord, the Chief Justice and Dua, J. With utmost respect to my Lord, the Chief Justice, I am unable to agree with his decision. I entirely agree with the decision of Dua J.

ORDER OF THE FULL BENCH

In view of the majority decision the two writ petitions are accepted and the impugned orders are quashed. There is no order in regard to costs.

B.R.T.

713 ILR—(P & H) Government Press, Chd.