SAMARAWEERA
v
THE PEOPLE'S BANK AND OTHERS

SUPREME COURT.
DR. SHIRANI BANDARANAYAKE, J.
DISSANAYAKE, J.
RAJA FERNANDO, J.
SC (FR) 85/2004
JANUARY 13 AND 20 2005

Fundamental rights – Article 12, 126 Constitution – People's Bank Act, No. 29 of 1961 – Section 5 (e) – Public Administration (PA) Circulars – Do they apply to the Bank – Should the Bank expressly adopt same – Extension – Refused – Should reasons be given – Duty to give reasons when? – Legitimate expectation.

The petitioner a Bank employee was granted a year's extension on reaching 55 years, but when he applied for the second extension he was given only 2 months and 10 days. The petitioner contended that under the Bank Circular 323/2001 read with PA. Circular 5/2002, he was entitled to remain in service until he reached 57 years. It was also contended that he had a legitimate expectation that he could serve until 57 years without obtaining an extension. Furthermore as others who failed to qualify for an extension under Bank Circular 323/2001 had in fact been granted, he has been discriminated.

Held: Raja Fernando, J., Nimal Dissanayake, J.

(1) The 1st respondent Bank had power to make rules under section 5 of the People's Bank Act regarding the conditions of service of its employees, PA Circular had no application to Bank employees unless it had been expressly adopted by the 1st respondent Bank.

(2) The Circular applicable was the Bank Circular, which stated that 55 years was the age of retirement and that extensions will be granted only if the employees satisfied certain conditions set out in the Circular. The petitioner had not established the conditions set out in this Circular for the grant of an extension therefore he could not have a legitimate expectation that he will be granted an extension.

(3) Certain employees who did not satisfy the conditions set out in the Circular had been granted extensions – there was infringement of

fundamental rights under Article 12 (1) – He is entitled to be compensated.

Per Raja Fernando, J.

"The respondents need give reasons for the non extension only when the petitioner has made out a *prima facie* case, and in this case as the petitioner has failed to establish a *prima facie* case, that he had a legal right to be granted an extension the respondents were under no duty to give reasons for the non extension of the services of the petitioner".

Per Raja Fernando, J.

"By failing to apply the Circular in a uniform manner and in selectively granting favoured treatment to certain employees by misapplying the Circular the 1st respondent Bank and its management have infringed the right of the petitioner to equality and equal protection of the law".

Per Dr. Shirani Bandaranayake, J. (On the question of duty to give reasons a legitimate expectation).

"Although there may not be a requirement for the Extension of Service Committee to give reasons for their decision to the petitioner, the 1st respondent Bank owed a duty to this Court to reveal the reasons for their decision, ... the Bank should have revealed all such reasons to this Court and denial of tendering reasons for their decision to this Court would unavoidably draw an inference that there were no valid reasons for the refusal of the extension of service to the petitioner".

(1) A right to reasons is the indisputable part of the sound system of judicial review, natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice it is a healthy discipline for all who exercise power over others.

(2) Legitimate expectation must be given a broad interpretation, considering the concept of legitimate expectation being linked to the concept of procedural fairness, this could depend on three different ways. Firstly it could be on the basis of procedural rights for the purpose of protecting the applicant's future interest. Secondly, the concept is based on the foundation of procedural rights, Thirdly it could arise where an applicant had relied on a particular criteria, whereas the defendants had applied a different one.

(3) It is in evidence that the Bank had a practice of granting extensions up to the age of 60 years, the earlier Circulars introduced prior to Circular 323/2001, had clear provisions regarding such extensions where the employees had continued up to 60 years on extension.

In such circumstances, a Bank employee would whilst knowing that, he could retire at 55 years, would have a legitimate expectation to service up to the age of 60 years on extensions of his service and therefore it is not correct to state that the legitimate expectation of an employee would be to retire at 55 years.

(4) Although the Extension of Service Committee was granted the authority to consider the extension of service, they had to exercise their discretion according to law having in mind the basic concepts stipulated in Article 12(1). It is obvious that the Committee had acted arbitrarily as well as unreasonably in relation to the application made by the petitioner.

Per Dr. Shirani Bandaranayake, J. (Dissenting)

"I hold that the said refusal of the Bank to grant an extension of service to the petitioner is in violation of Article 12 (1), I accordingly declare that the petitioner was entitled to an extension of service for a period of one year with effect from 21.1.2004.

Although there has been a violation of Article 12 (1) it could not be possible for him to be given an extension since the petitioner has now retired from the service of the Bank".

Cases referred to:

(1) *Wijepala* v *Jayawardena and others.* SC Application No. 89/95 SC Minutes of 30.6.95.

(2) *Manage* v *Kotakadeniya and others.* 1997 3 Sri L.R. 264.

(3) *Suranganie Marapone* v *Bank of Ceylon and others* 1997 1 Sri L.R. 256.

(4) *Pure Spring Co, Ltd.* v *MInister of National Revenue* (1947) 1 D.L.R. at 501.

(5) *Minister of National Revenue* v *Wrights Canadian Ropes Ltd.* (1947) AC 109,

(6) *R.* v *Gaming Board for Great Britian ex.p. Benaim and Khaida* 1970 2 QB 412.

(7) *R.* v *Civil Service Appeal Board ex. P Cunningham* (1991) 4 All.E.R. 310.

(8) *Padfield* v *Minister of Agriculture, Fisheries and Food* 1968 AC 997.

(9) *Lloyd* v *McMahon* (1987) 1 All E.R. 1118.

(10) *Doody* v *Secretary of State for the Home Department* [1993] 3 All.E.R. 92.

(11) *Lal Wimalasena* v *Asoka Silva and others* S.C. Application No. 473/2003 S.C. Minutes of 4.8.2005.

(12) *Karunadasa* v *Unique Gemstones* (1997) 1 Sri L.R. 256.

(13) *W.P.A. Pathirana* v *The People's Bank and others.* SC(FR) 297/2004 S.C. Minutes of 12.12.2005.

(14) *Schmidt* v *Secretary of State for State for Home Affairs* (1969) 2 Ch. 149.

(15) *McInnes* v *Onslow Fane* (1978) 1 W.L.R. 1520.

(16) *Breen* v *Amalgamated Engineering Union* (1971) 2 QB 175.

(17) *Cinnamond* v *British Airports Authority* (1980) 1 W.L.R. 582.

(18) *R.* V *Barnsley Metropolitan Borough Council ex.P. Hook* (1976) 1 W.L.R. 1052.

(19) *Attorney-General for New South Wales* v *Quin* (1990) 170 C.L.R. 1.

(20) *Attorney-General of Hong Kong* v *Ng Tuen Shiu* (1983) 2 All E.R. at 346.

(21) *Council of Civil Service Unions* v *Minister for the Civil Service* (1984) 3 All. E.R. 935.

(22) *In Re Westminster City Council* (1986) A.C. 668.

(23) *Ram Krishna Dalmia* v *Tendolkar* A.I.R. 1958 S.C. 538.

APPLICATION for Infringement of Fundamental Rights.

J. C. Weliamuna for petitioner.

Wijedasa Rajapaksa P.C. with *Rasika Dissanayake* for 1st to 6th respondents.

Cur.adv.vult.

July 24, 2007

RAJA FERNANDO, J.

The petitioner who was a Deputy Manager of the 1st respondent Bank filed this application complaining of the violation of his fundamental rights by the respondent Bank, in not granting him his second extension of service in terms of Bank Circular No. 323/2001.

On 16.03.2004 this court granted the petitioner leave to proceed with the alleged infringement of Article 12(1) of the Constitution.

The petitioner had joined the Bank as a Staff Assistant Grade III on 01.11.1972 and after receiving his due promotions was functioning as a Deputy Manager attached to the Audit Department on 21.01.2003 when he reached the age of 55 years. The respondent Bank had granted him his first extension upto 21.01.2004. However when the petitioner made his application for the second extension he has been informed by

letter dated 25.11.2003 that he is granted an extension for a period of 2 months and 10 days up to 01.04.2004.

It is the petitioners contention that in terms of Bank Circular No. 323/2001 read with Public Administration Circular 05/2002 which amended section 5 of Chapter V of the Establishments Code, Public officers were permitted to remain in service upto 57 years of age without obtaining extension of service annually. Further by the said Public Administration Circular 05/2002 a public officer could continue in service beyond 57 years upto 60 years with the approval of the appointing authority on individual merit.

The People's Bank Act as amended, in section 5(s) and (t) clearly gives the Bank the power

(s) to employ such officers and servants as may be necessary for carrying out the work of the Bank.

(t) to make rules in respect of the conditions of service and for the disciplinary control of the officers and servants of the Bank.

This provision specifically empowers the Bank to make rules pertaining to the conditions of service at the Bank. Therefore it is my view that Public Administration circular on matters pertaining to conditions of service will not apply to the Bank unless the Bank adopts such circular and in the light of Bank Circular 323/2001 it is the Bank circular that will be applicable to the employees of the Bank.

It is the complaint of the petitioner that

(1) he had a legitimate expectation of continuing in service upto 57/60 years

(2) that he was not given any reason for not granting his second extension

(3) that he has been discriminated against in that others similarly circumstanced have been given extension of service by the Bank.

The petitioner further states that he has had an unblemished record of 32 years service in the respondent Bank and therefore the non extension of his service is unreasonable and unfair.

The 1st to 6th respondents filing their objections to the application took up a preliminary objection that the petitioner's application is out of time and therefore should be dismissed *in limine*.

Before I proceed further let me examine the question of the time bar taken up by the respondents.

The letter informing the petitioner that his services are extended only by 2 months and 10 days up to 01.04.2004 is dated 28.11.2003 (P6). It is not disputed by the respondent that at the time letter (P6) was sent the petitioner was on duty at the Senkadagala Branch. The petitioner contends that he received letter (P6) on 24.12.2003 at the Senkadagala Branch. The date stamp on the letter (P6) is unclear. This letter has been written by the Chief Manager (Human Resources) to the petitioner through Chief Manager (Internal Audit). At the right hand bottom of the letter is an endorsement dated 24.12.2003 to state that it was received by the audit team of the Senkadagala Branch.

On the document (P6) which has not been sent direct to the petitioner and the endorsements thereon it would appear that this letter has taken a circuitous route through the Audit Department and the Audit team at Senkadagala Branch before reaching the petitioner. Therefore it seems probable that documents (P6) was received by the petitioner on 24.12.2003.

This fact is supported by M. Kodituwakku who was the Audit Team Leader who was in charge of the audit team at the Senkadagala Branch at the relevant time. (Affidavit of M. Kodituwakku marked X1 filed with the counter affidavit)

The petitioner has made a complaint to the Human Rights Commission on 08.01.2004 and petitioned this Court on 11.02.2004.

Considering section 13(1) of the Human Rights Act together with the above material I am satisfied that the petitioner has

come to this court within time and the preliminary objection raised by the respondent on time bar must fail.

Coming to the merits of the application. The applicable circular with regard to extensions in the Bank being Circular No. 323/2001 (P2) it is clear that the age of retirement of the officers of the respondent Bank is 55 years.

According to Circular No. 323/2001 in granting extensions the Bank has to consider a number of factors:

1. Future work needs/Business requirements and exigencies of service;
2. Cost of holding back, a chain of Promotions;
3. The Management must be fully convinced that the applicant seeking the extension has an outstanding record of performance;
4. That the available staff can not perform the specific duties that will be assigned to the employee;
5. .....
6. .....
7. .....

In terms of the circular the retirement age being clearly stated as 55 years, ordinarily the petitioner could not have entertained a legitimate expectation of continuing in service beyond 55 years, unless he can satisfy court that under the criteria set out in the circular, e.g.,

(a) outstanding performance;

(b) available staff cannot perform the specific duties

he qualified for an extension.

The *onus* of proving that the petitioner has an outstanding record of performance or that the available staff cannot perform the specific duties is on the petitioner. There is no material before this court that the petitioner qualified for an extension under the criteria. Hence it is my conclusion that the petitioner

has failed to establish that he had a legitimate expectation of being extended in service in terms of the circular.

The petitioner has also complained that no reasons have been given by the respondents for the refusal to grant him an extension. Before the respondents explain why an extension was not granted to the petitioner, it is the petitioner's duty to show that he had a right to an extension.

For the reasons I have stated earlier I have.come to a finding that he has failed to prove that he had a legitimate right under the circular to be extended.

Even his complaint that others who were similarly placed have been granted extensions by the Bank, cannot give rise to an expectation that the Bank should have extended the services of the petitioner. It is only those who qualified under the criteria in Circular No. 323/2001 who could have claimed an extension as a right. The mere fact that those not qualified under the circular have been granted extensions will not entitle the petitioner also to be granted an extension. A legal right cannot arise on an illegal grant of a concession to another. It might be a ground for complaint of discrimination/unequal treatment which I will deal with later.

For the above reasons I conclude that the respondents need give reasons for the non-extension only when the petitioner has made out a *prima facie* case and in this case as the petitioner has failed to establish a *prima facie* case that he had a legal right to be granted an extension the respondents were under no duty to give reasons for the non-extension of the services of the petitioner. This has been the consistent view of this Court as evident from the earlier decisions of the Court in

Wijepala v *Jayawardena & others*[1];

Manage v. *Kotakadeniya and others*[2];

Suranganie Marapana v. *Bank of Ceylon and others*[3].

It is submitted on behalf of the petitioner that others with similar categorization have been granted extensions whilst the petitioner has not been granted an extension. To use the

petitioner's own terms respondents have granted extensions to officers whose services do not warrant extensions". As I have held earlier even if such allegation is true the petitioner is not entitled to an extension on that score. The petitioner will have to stand or fall on the record of his own service.

However on the complaint of discrimination/unequal treatment made by the petitioner, there is merit in his complaint. The respondents have granted extensions to others who have not qualified for extensions under the circular. Some of the respondents have in violation of the circular granted extensions to their favourites disregarding the criteria set out in Circular No. 323/2001. To that extent the petitioner has succeeded in satisfying Court that the respondents have discriminated against the petitioner.

On the one hand this Court does not wish to perpetuate or encourage the abuse of the circular. On the other hand this Court does not intend to condone the acts of some of the respondents who have abused their discretion and misinterpreted the circular to grant extensions to employees who did not qualify for extensions under the circular.

It is my view that all circulars and other guidelines must be applied fairly and equally to all persons to whom they apply.

Therefore, I hold that by failing to apply the said circular in a uniform manner and in selectively granting favoured treatment to certain employees by misapplying the circular the 1st respondent Bank and its management have infringed the right of the petitioner to equality and equal protection of the law enshrined in Article 12(1) of the Constitution.

In considering the relief to be granted, it is pertinent to note that while the petitioner has asked for the extension of service, he has not asked for the cancellation of the extension of service granted to those whom he named as persons who have not shown outstanding performance or who can be immediately replaced. This is proof of the fact that what the petitioner is seeking is the continuation of the abuse of the discretion under

the circular and this time to his advantage. Had he sought such an order, this court would have seriously considered canceling the extensions wrongfully granted, which is no doubt the crux of the wrong complained of in this case, what the petitioner has sought to achieve in this application is to construe the misapplication of the circular to his benefit and to take advantage of the arbitrary decisions of the management to disregard the provisions of the circular rather than give effect to the clear provisions of the circular.

Therefore, we refuse to grant the petitioner the extension of service sought by him. However acting under Article 126 (4) of the constitution, which empowers this court to grant relief that is just and equitable I direct the 1st respondent Bank to pay the petitioner a sum of rupees Fifty thousand (Rs. 50,000/-) as compensation and costs for the infringement of his fundamental rights under Article 12(1).

We also considered whether those officers who were responsible for the abuse of their discretion should be directed to pay compensation personally. However, on this occasion I desist from doing so because of the time lapse and that many of them are no longer in service.

We direct that in the future the 1st respondent Bank must interpret the aforesaid circular or such other circulars that may be in force, strictly and fairly, when granting extensions of service to its employees. In the future if any officer of the 1st respondent Bank is found to have abused the discretion granted to him, he may be held to be personally liable and be directed to pay both compensation and costs.

The sum of Rs. 50,000/- as compensation and costs ordered by this court to be paid within one month from the date of this order.

Relief refused. Compensation granted.

DISSANAYAKE, J. – I agree.

Relief refused and compensation granted.

July 24, 2007

DR. SHIRANI BANDARANAYAKE, J.

I have had the benefit of reading the judgment, in draft of my brother Raja Fernando, J. Whilst I concur with the amount of compensation that should be awarded to the petitioner and the finding in regard to the preliminary objection raised by the learned President's Counsel for the 1st to 6th respondents, **I regret that I am unable to agree with the reasoning and the decision given in his judgment on the questions of legitimate expectation and the duty by the Bank to give reasons for the refusal of the extension of service to the petitioner for the following reasons.**

The petitioner alleged that by the decision of the 1st respondent Bank (hereinafter referred to as 'the Bank') to retire him from the service of the said Bank with effect from 01.04.2004 (P6) had violated his fundamental rights guaranteed in terms of Article 12 (1) of the Constitution for which this court had granted leave to proceed.

The facts of the petitioner's case, as submitted by him, are briefly as follows:

The petitioner had joined the Bank as a Staff Assistant Grade III in 1972. Later he was promoted to Staff Assistant Grade II in 1978, Staff Assistant Grade I in 1985, Assistant Manager in 1996 and to the Grade of Deputy Manager in 2001. Consequent to the said promotion in 2001, he was designated as a Deputy Manager in the Audit Department of the Bank.

Since the petitioner was of the view that he had the capacity and the ability to serve the Bank upto the age of 60 years, in June 2003 he had applied for his second extension of service, which fell due on 21.01.2004.

By letter dated 28.11.2003, the Bank had informed him that his services were extended from 21.01.2004 to 01.04.2004 (P6).

In October 2001, the Bank had introduced the Circular No. 323/2001 dated 12.10.2001, that contained a new policy and

scheme for extensions of service for the employees, which cancelled all previous circulars relating to extensions of service. The employees of the Bank were instructed to make applications in terms with the aforementioned new circular.

The petitioner was surprised by the said decision of the Bank to deny his extension of service as the following persons were granted extensions of services under the new scheme:

i. P. B. Ranasinghe
ii. K. K. V. Sumathipala
iii. P. A. O. Ariyadasa
iv. E. S. Silva
v. M. D. Manasinghe
vi. B. D. Sumanasena

The petitioner therefore had stated that the decision of the Bank to retire him from service with effect from 01.04.2004 is illegal, unlawful, arbitrary, irrational and inconsistent with the provisions of the Circulars No. 323/2001 (P2) dated 12.10.2001 and thereby had violated his fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The contention of the learned Counsel for the 1st to 6th respondents was 3 fold.

Firstly, it was submitted that the granting of extensions of service is at the discretion of the management of the Bank and that there is no requirement to give reasons for such decisions taken by the Bank.

Secondly, it was contended that the Staff Circular No. 323/2001, (P2) clearly had designated and had laid down that 'the age of retirement of the Bank employees shall be 55 years' and therefore the legitimate expectation of all the petitioners would have been to retire at 55 years.

Thirdly, considering the extensions granted, which were cited by the petitioner as persons who were similarly circumstanced, it was contended that the said conclusions are not 'unreasonable, irrational or arbitrary'.

Having stated the contention of the 1st to 6th respondents, let me now turn to consider the aforementioned submissions separately.

I. The need to give reasons

It is common ground that the extension of service of the employees of the Bank are governed by the terms specified in Staff Circular No. 323/2001 dated 12.10.2001. This Circular deals with several aspects pertaining to granting of extension of service and whilst several clauses make provisions regarding the basic requirements and the procedure for the extension of service implementation, clause 12 and clause 14(iii) refer to the specific need to give reasons in the event of non-recommendation of an application. Clause 12 has to be read with other clauses and therefore clause 11, clause 12 and clause 14 (iii), are reproduced below and are in the following terms:

"Clause 11 - All application forms duly filled as stated above should be sent to the Chief Manager H.R. Department to be received by the Chief Manager on or before 20th January 2002 without exception if they are recommended. Staff Department should process all applications received by them, and submit their applications to the Service Extension Committee by February 10, 2002. The Service Extension Committee should sit from 10th February through 20th February 2002 and forward papers to General Manager, who will finally decide on the individual applications by February 25th 2002.

Clause 12 - In the event the applications is/are not recommended, a **separate report stating the reasons** why it was not recommended should be sent directly to DFGM (Est, HR, I and I) (emphasis added).

Clause 14(III) - When any member of the line management is not recommending an application for an extension, **a separate report has to be submitted by such manager, giving reasons for the same** to DGM (E, HR I and I) extension is received by such manager (emphasis added)."

A careful examination of clauses 12 and 14 (iii) of the aforementioned circular clearly specifies that, if an application is not recommended by the line management, a separate report has to be submitted by such manager, with reasons as to his decision for the non-recommendation. This aspect clearly indicates that the Extensions of Service Committee needed all the relevant information including reasons for refusal, if any, for deciding on each applicant on their extensions of service and therefore the said Extensions of Service Committee should have maintained records in relation to all applicants, who had applied for extensions of service.

Learned Counsel for the petitioner contended that, no detailed reasoning has been given in terms of clauses 11, 12 and 14(iii) of the Circular No. 323/2001 in relation to the petitioner's extension of service.

The petitioner, as referred to earlier, had submitted the application for his extension of service on 09.06.2003 to his immediate Superior Officer. That officer did not merely make a recommendation on the application form, but clearly stated that,

"මෙම නිලධාරියාගේ සේවය තවත් වර්ෂයකින් දීර්ඝ කිරීම විශේෂයෙන් නිර්දේශ කරමු."

Thereafter the application was forwarded to the AGM, who had strongly recommended his application on 30.06.2003, where he had stated that,

"This officer is a very effective audit officer. He is very capable and hardworking. It is very difficult to replace an officer like him. Hence extension of service by one year is

strongly recommended. Please extend as the Department has a service shortage of Staff – specially the efficient staff."

The contention of the respondents regarding the recommendations by the Superior Officers on the application made by the petitioner was that such should be a strong recommendation. Such a recommendation should not be confined to mere words, but must depend on the type of recommendation made by the relevant officers. In fact on a careful examination, it is quite clear that both the immediate Superior Officers of the petitioner had given strong recommendations for the petitioner's service to be extended.

In the circumstances of this application it is necessary to state as referred to earlier, that I am of the view that, the strength of the recommendation cannot be considered merely on the words placed on the documents that has to be forwarded, but should be on the observations made by the immediate Superior Officer of the applicant. Such an officer would be in the best position to assess the performance of an applicant and could indicate justifiable reasons for granting an extension to an officer. Therefore it would be necessary to consider the observations of the immediate Superior Officer of an applicant rather than give consideration only to the mere phrase of 'strongly recommended' by a higher official.

The respondents have not made any reference to the decisions of the Extensions of Service Committee and therefore the reasons for the refusal of the extensions by the Extensions of Service Committee is not before this Court.

Thus it is apparent that, although there may not be a requirement for the Extension of Service Committee to give reasons for their decision to the petitioner, the 1st respondent Bank owed a duty to this Court to reveal the reasons for their decisions. It would not be incorrect to presume that in order to arrive at a decision, the committee must consider several aspects in terms with the relevant clauses of Circular No. 323/2001 and more importantly that they should have revealed the reasons for their decisions. As stated earlier, although the reasons were not communicated to the petitioner, the Bank

should have revealed all such reasons to this Court and denial of tendering reasons for their decisions to this Court would undoubtedly draw an inference that there were no valid reasons for the refusal of the extension of service to the petitioner.

In general terms, considering the general rule, the position taken by Court is that there is no duty to state reasons for judicial or administrative decisions *Pure Spring Co. Ltd.*, v *Minister of National Revenue*(4) at 501, (Statements of Reasons for Judicial and Administrative Decisions, Michael Akehurst, MLR Vol. 33, 1970, pg.154). Accordingly as Michael Akehurst has clearly pointed out, 'a statement of reasons is not required by the rules of natural justice, and therefore there is no duty to state reasons for the decisions of Courts, juries, licensing justices, administrative bodies and tribunals or domestic tribunals' (*supra*).

Although the common law had failed to develop any general duty to provide a reasoned decision *Minister of National Revenue* v *Wrights' Canadian Ropes Ltd.*(5) at 109, *R* v *Gaming Board for Great Britain*, ex. p. *Benaim* and *Khaida*(6) at 417, *R* v *Civil Service Appeal Board*, ex. *P. Cunningham*(7) at 310, there are several exceptions to this general principle.

One clear method was through statutory intervention, which came into being by the recommendation of the Franks Committee [Cmnd. 218 (1957)]. The Franks Committee recommended the giving of reasons [(*supra*) paras 98, 351], that came into being through the Tribunals and Inquiries Act, 1958, which was replaced by the Tribunals and Inquiries Act, 1992.

The Franks Report of 1957, [(*supra*), at para 98], in fact highlighted the issue as to why reasons should be given, referring to ministerial decisions taken, after the holding of an inquiry.

> *"It is a fundamental requirement of fair play that the parties concerned in one of these procedures should know at the end of the day why the particular decision has been taken. Where no reasons are given the individual may be forgiven*

for concluding that he has been the victim of arbitrary decision. The giving of full reasons is also important to enable those concerned to satisfy themselves that the prescribed procedure has been followed and to decide whether they wish to challenge the minister's decision in the courts or elsewhere. Moreover as we have already said in relation to tribunal decisions a decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more truly to have been properly thought out".

Another method, and one which was extremely important from the practical point of view, indirectly imposed a requirement that reasons be stated and if not had decided that the result reached in the absence of reasoning is arbitrary. Thus in the well known decision in *Padfield* v *Minister of Agriculture*(8) at 997 the House of Lords decisively rejected the notion that the absence of a duty to state reasons precluded the Court from reviewing the reasons for the decision. It was therefore stated in *Padfield (supra)* that,

"If all the prima facie reasons seem to point in favour of his (the Minister's) taking a certain course to carryout the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions."

Similarly in *Minister of National Revenue* v *Wrights' Canadian Ropes Ltd.*, (*supra*), which considered an appeal from an income tax assessment, the Privy Council stated that,

"Their lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons for taking action.... But this does not mean that the Minister by keeping silent can defeat the taxpayer's appeal.... The court is always entitled to examine the facts which are sworn by evidence to have been before the Minister when he made his determination. If those facts are

..... insufficient in law to support it, the determination cannot stand....."

Accordingly an analysis of the attitude of the Courts since the beginning of the 20th century, clearly indicates that despite the fact that there is no general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision is treated according to the standard of fairness. In such a situation without a statement from the officer, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness *vis-a-vis*, rights of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement. Referring to reasons, fair treatment and procedural fairness, Galigan (Due Process and Fair Procedure, Clarandon Press, Oxford, pg. 437) stated that,

"If the new approach succeeds, so that generally a statement of reasons for an administrative decision will be regarded as an element of procedural fairness, then various devices invented in the past in order to allow the consequences of a refusal of reasons to be taken into account will gradually lose their significance".

The necessity to give reasons was quite succinctly expressed in *Lloyd* v *McMahon*[9] at 1118), where Lord Donaldson, M. R. had concluded that the giving of reasons was necessary, where McCowan, L.J., stated that the Court was not required to tolerate the unfairness of reasons not being given and Legalt L. J. had stated that the duty to act fairly extended to the duty to give reasons. The need for reasons in administrative decisions was described in very practical terms by Lord Mustill in *Doody* v *Secretary of State for the Home Department* [10] at 92, where he had stated that,

"a perceptible trend towards an insistence on greater openness, or if one prefers the contemporary jargon, 'transparency', in the making of administrative decisions."

The necessity to give reasons was considered by this Court, as referred to in Bandaranayake, J's judgment in *Lal Wimalasena* v *Asoka Silva and Others* (11) in *Wijepala* v *Jayawardene*(1), *Manage* v *Kotakadeniya*(2) at 264, *Suranganie Marapana* v *The Bank of Ceylon and Others*(3) at 156 and in *Karunadasa* v *Unique Gemstones*(12) at 256. In *Wijepala* v *Jayawardene* (*supra*), considering the necessity to give reasons, at least to this Court, Fernando, J., was of the view that,

"The petitioner insisted, throughout, that established practice unquestionably entitled him at least to his first extension and that there was no relevant reason for the refusal of an extension...

Although openness in administration makes it desirable that reasons be given for decisions of this kind, in the case I do not have to decide whether the failure to do so vitiated the decision. **However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a *prima facie* case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons – and so also, if reasons are suggested, they were in fact not the reasons, which actually influenced the decision in the first place"** (emphasis added).

In *Manage* v *Kotakadeniya and others* (*supra*), where an application of a Post Master for his extension of service, upon reaching the age of 55 years was refused, Amerasinghe, J., was of the view that,

"the refusal to extend the service of the petitioner was not based on adequate grounds."

The order of retirement was thus quashed on the basis that the petitioner in that case was treated unequally and that there

had been discriminatory conduct against the petitioner.

In *Suranganie Marapana* v *The Bank of Ceylon and Others* (*supra*), it was held that the Board failed to show the Court that valid reasons did exist for the refusal to grant the extension, which was recommended by the corporate management and therefore it was held that the refusal to grant the extension of service sought was arbitrary, capricious, unreasonable and unfair.

It is noteworthy to refer to the views expressed by Mark Fernando, J., in *Karunadasa* v *Unique Gemstones* (*supra*) with reference to the need to give reasons to a decision, where it was stated that,

> *".... whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly the Court cannot be asked to presume that they were valid reasons for that would be to surrender its discretion."*

On a consideration of our case law in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion. These aspects have been stated quite succinctly in the following passage, where Prof. Wade had taken the view that, (Administrative Law, 9th edition, pg. 522),

> *"Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of law.* ***A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over other.*** (emphasis added)"

And more importantly,

"The only significance of withholding reasons is that if the facts point overwhelmingly to one conclusion, the decision maker cannot complain if he has held to have had no rational reason for deciding differently, and that in the absence of reasons he is in danger of being held to have acted arbitrarily."

In the light of the aforementioned, it becomes important to refer to the decision in *Suranganie Marapana* v *The Bank of Ceylon and Others* (*supra*), which was discussed in detail in *W. P. A. Pathirana* v *The People's Bank and Others*[13].

In that case, the petitioner was the Chief Legal Officer of the respondent Bank. As she was to reach the age of 55 years on 27.11.1996 she applied to the Bank on 25.05.1996 for an extension of service for an initial period of one year. Her application was recommended by the Personnel Department in its draft Board minute, under exceptional circumstances. The Board of Directors took four months to decide on the application and after a lapse of a further month, the petitioner was informed on 22.10.1996 that her application had been rejected and she would be retired from 27.11.1996. Officers, who were of a comparable grade had been granted extensions. But she was refused for no reason. The Board failed to submit to Court its decision. The Chairman of the Bank stated in his affidavit that the refusal to extend her services was done *bona fide* and unanimously after a careful evaluation of her application and the need of the Bank to increase the efficiency of its Legal Department. This Court held that the Board failed to show the Court that valid reasons did exist for the refusal to grant the extension, which was recommended by the corporate management. Considering the question in issue the Court stated that,

".... the Personnel Department recommended that the petitioner's service be extended for a period of one year with effect from 27.11.1996 under exceptional circumstances. If, therefore, the Board of Directors thought otherwise, it should have done so only for valid reasons and on reasonable

grounds. Even though Public Administration Circular No. 27/96 dated 30.08.1996 (P8), which was an amendment to Chapter 5 of the Establishments Code, does not have any direct application to the matter before us, it clearly sets out the attitude of the State in regard to the question of extension of service of public sector employees, when it states that where extensions of service of State Employees are refused ***"there should be sufficient reasons to support such decisions beyond doubt."*** *Even if the bank failed to give the petitioner the reasons for the refusal of her application for an extension of service, it undoubtedly became obliged in law to provide such reasons to this Court where the decision of the Board was challenged by the petitioner.* (emphasis added)"

The decision in *Suranganie Marapana* (*supra*) in my view is strongly supportive of the view taken by several decisions that satisfactory reasons should be given for the decisions taken by a Committee. In fact Prof. Wade (Administrative Law, supra at p. 226-229) has clearly stated that,

"The whole tenor of the case law is that the duty to give reasons is a duty of decisive importance which cannot lawfully be disregarded."

Having considered the necessity to adduce reasons for administrative decisions, let me now turn to examine the question of legitimate expectation.

II. Legitimate expectation

Learned President's Counsel for the Bank contended that the petitioner cannot be heard to say that her fundamental rights guaranteed in terms of Article 12(1) of the Constitution was violated since she had a legitimate expectation to work for the Bank beyond the age of 55 years, as, if there was any such legitimate expectation with regard to serving at the Bank, such legitimate expectation would have been to serve only upto the age of 55 years.

This contention raises the basic issue as to how a legitimate expectation could arise in a situation such as extensions of service.

In general terms legitimate expectation was based on the principle of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. As has been pointed out by D. J. Galigan (Due Process and Fair Procedures, A study of Administrative Procedure, 1996, pg. 320),

> *"In one sense legitimate expectation is an extension of the idea of an interest. The duty of procedural fairness is owed, it has been said, when a person's rights, interests, or legitimate expectations are in issue."*

Discussing the concept of legitimate expectation, David Foulkes (Administrative Law, 8th Edition, Butterworths, 1995, pg. 290) has expressed the view that a promise or an undertaking could give rise to a legitimate expectation. In his words:

> *"The right to a hearing, or to be consulted, or generally to put one's case, may also arise out of the action of the authority itself. This action may take one of two, or both forms; a promise (or a statement or undertaking) or a regular procedure.* ***Both the promise and the procedure are capable of giving rise to what is called a legitimate expectation, that is, an expectation of the kind which the courts will enforce"*** (emphasis added).

An examination of the decisions pertaining to rights and privileges in the field of Administrative Law, clearly indicates that since the decision of Lord Denning M.R., in *Schmidt* v *Secretary of State for Home Affairs*(14) at 149, the concept of legitimate expectation had come into being to play an important role in the development of fairness. A long line of cases, since the decision in *Schmidt* (*supra*), had considered the concept of legitimate expectation *R* v *Gaming Board for Great Britain, ex. P. Benaim and Khaida*(6), *McInnes* v *Onslow – Fane* (15) at 1520, *Breen* v *Amalgamated Engineering Union*(16) at 175,

Cinnamond v *British Airports Authority*[17] at 582, *R* v *Barnsley Metropolitan Borough Council, ex. P. Hook*[18] at 1052.

Examining the decision in *Schmidt* (*supra*) and the Australian decision in *Attorney General for New South Wales* v *Quin*[19] at 1, P.P. Craig (Legitimate Expectations, A Conceptual Analysis, L. Q.R. (1992) 108, pg. 79) had observed the applicability of the concept of legitimate expectation in administrative decisions. In his words,

> *"The foundation of the applicant's procedural rights is not simply that he has some legitimate expectation of natural justice or fairness.* ***The basis of the applicant's claim to protection is that he has a legitimate expectation of an ultimate benefit which is in all the circumstances felt to warrant the protection of that procedure,*** *in this instance his continued presence in the country"* (emphasis added).

Thus it is apparent that, as stated by *David Foulkes*, (*supra*) a promise or a regular procedure could give rise to a legitimate expectation that could be enforced by Court. This position is clearly illustrated by the decisions in *Attorney General of Hong Kong* v *Ng Tuen Shiu*[20] at 346 and *Council of Civil Service Unions* v *Minister for the Civil Service*[21] at 935.

In *Ng Tuen Shiu*, (*supra*), Ng was an illegal immigrant. The government had announced a policy of repatriating illegal immigrants. According to the said policy each immigrant would be interviewed and each case was treated 'on its merits' Ng was interviewed and his removal was ordered.

Ng complained that at the interview he was not allowed to explain the humanitarian grounds on which he would have been allowed to stay, but was allowed only to answer the questions put to him. It was stated that although Ng was given a hearing, it was not the hearing in effect, which was promised as what was promised was to give a hearing at which 'mercy' could be argued. The Judicial Committee agreed that, on that narrow point, the government's promise had not been implemented

and that *Ng's case* had not been considered on its merits, and therefore the removal order was quashed. Accordingly Ng succeeded on the basis that he had a legitimate expectation that he would be allowed to present his case arising out of the government's promise that everyone affected would be allowed to do so.

In *Council of Civil Service Unions* (*supra*), the question of legitimate expectation arose, not due to a promise as in *Ng's* case *(supra),* but out of a regular practice, which could reasonably be expected to continue. In this matter, the then British Prime Minister Mrs. Margaret Thatcher, issued an instruction that civil servants engaged on certain work would no longer be permitted to be members of trade unions. The House of Lords held that those civil servants had a legitimate expectation that they would be consulted before such action was taken, as it was an established practice for government to consult civil servants before making significant changes to their terms and conditions of service.

Having stated the applicability of legitimate expectation on the grounds of a promise and a procedure, let me now turn to examine the petitioner's case in the light of the aforementioned position.

It is not disputed that the 1st respondent Bank had been granting extension of services to its employees beyond the age of 55 years. It is also not disputed that the previous circulars, which dealt with the extensions of service did not refer to the age of retirement, but simply called for applications for extensions of service. For instance, clause 1 of Staff Circular No. 286/97(2), which refers to 'applications for extension of service' states that,

> *"As per instructions given in the above circulars, all employees who wish to remain in service on the basis of extension of service beyond 55 years of age should submit their applications for extension to the relevant line authorities of the subject employee, six months prior to the date of retirement."*

However, by Staff Circular No. 323/2001, (P2) of October 2001, amendments had been made to the existing policy for extension of service, which stated that the age of retirement of the Bank employees shall be 55 years. Although the age of retirement was fixed at the age of 55 years, the Circular No. 323/2001 had made provision for the grant of extensions. In fact it is pertinent to note that the said circular clearly refers to the decision of the Board of Directors of the 1st respondent Bank at their September 2001 meeting was to '*implement the policy and scheme for the extension of services*' of the employees of the Bank. The relevant paragraph of the aforesaid circular reads as follows:

> *"The Board of Directors at their meeting on September 28th 2001 decided to implement the policy and scheme for the extension of services detailed as stated below:*
>
> *The age of retirement of the Bank employees shall be 55 years. However the General Manager/CEO and Management nominated by the CEO will grant extensions of the period of employment of a staff member for a specific period beyond 55 years of age and upto the age of 60 years at their discretion taking into consideration the following factors."*

Accordingly, it is obvious that prior to the introduction of the new policy regarding extensions of service, extensions were considered and granted upto the age of 60 years and even under the new policy formulation, provision was made for extensions of service to be granted beyond the age 55 years. This position was incorporated in Clause 9 of Circular No. 323/2001 (P2), where it was stated that,

> *"The new policy will be fully implemented with effect from 1st March 2002. In the meantime extensions will be considered in the normal way...."*

It is not disputed that the petitioner had joined the Bank well before Circular No. 323/2001 came into effect. Moreover, he had been given extensions of service more than on one occasion, in terms of the previous circulars.

Learned Counsel for the petitioner strenuously contended that, although the age of retirement in the Bank was 55 years as was the case in most of the public sector establishments, this condition was subject to annual extensions being granted upto the age of 60 years.

If one has to consider the petitioner's position *vis-a-vis* the concept of legitimate expectation, it is apparent that he comes within both the categories explained by *David Foulkes (supra)*, which contains a promise and a regular procedure, which in other words could be categorized as substantive and procedural legitimate expectation.

It is to be noted that the doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural justice. (Administrative Law, Prof. Wade, 9th Edition, pg, 500). In *Re Westminster City Council*[22] at 668, considering the question of legitimate expectation it was stated that,

> *"The courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation."*

Considering the major aspects of legitimate expectation, *Prof. Wade* (*supra*, at pg. 372) has clearly indicated that,

> *"inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly or contrary to the citizen's legitimate expectation."*

Accordingly legitimate expectation must be given a broad interpretation as it could be used in more than one way utilizing the concept as the foundation for procedural fairness. Considering the concept of legitimate expectation being linked to the concept of procedural fairness, P. P. Craig (Administrative Law, 3rd Edition, 1994, pg 294-296) stated that this could depend on three different ways. *Firstly*, it could be on the basis of procedural rights for the purpose of protecting the

applicant's future interests. *Secondly*, the concept is based on the foundation of procedural rights. *Thirdly*, the legitimate expectation could arise, where an applicant had relied on a particular criteria, whereas the defendants had applied a different one.

Considering the aforementioned it is clearly evident that the Bank had had a practice of granting extensions upto the age of 60 years. As referred to earlier, the circulars, which were introduced prior to Circular No. 323/2001, had clear provisions regarding such extensions, where the employees of the Bank had continued upto the age of 60 years on extensions. Moreover, it is not disputed that even under the present Circular, provision has been made for extensions beyond the age of 55 years. Although guide lines and/or criteria have been laid down for such extensions beyond the age of 55 years, the fact clearly remains that, in principle the Bank had accepted the position that extensions would be considered beyond the age of 55 years at least for a limited number of employees.

In such circumstances an employee of the Bank would, while knowing that he could retire at the age of 55 years, have a legitimate expectation to service upto the age of 60 years on extensions of his service and therefore it would not be correct to state that the legitimate expectation of an employee would be to retire at the age of 55 years.

Having considered the aforementioned submissions let me now turn to examine the submissions made on the ground of discretion and/or unequal treatment.

III. Discretion and/or unequal treatment

The petitioner in paragraph 13 of his petition has set out several examples, where other officers were granted extensions. Whilst some of the officers had received the 2nd extension, others had obtained the 4th or the 5th extensions of service.

Having considered the aforementioned aspects let me turn to examine the aspects relating to equal treatment and discretion

based decisions taken by the Bank and thereby the validity of the decisions that were taken without giving any reasons.

The petitioner's complaint was that the refusal to grant her an extension of his service for a period of one year was arbitrary and unreasonable and violative of Article 12(1) of the Constitution for which this Court had granted leave to proceed under Article 12(1) of the Constitution. Article 12(1) of the Constitution, refers to the right to equality and reads as follows:

"All persons are equal before the law and are entitled to the equal protection of the law".

The equal protection to all persons guaranteed by means of constitutional provisions, ensures that there would not be any discrimination between any two persons, who are similarly situated. However, this does not mean that there should not be any kind of classifications among a group of people. All classifications would not become arbitrary and thereby invalid. What is necessary is that, such classification should be reasonable and is not based on an arbitrary decision. Therefore if the following conditions could be satisfied, such classifications would not become arbitrary or unreasonable classifications:

(a) that the classification must be founded on an intelligible differentia, which distinguish persons that are grouped in from others, who are left out of the group; and

(b) that the differentia must bear a reasonable, or a rational relation to the objects and effects sought to be achieved (*Ram Krishna Dalmia* v *Tendolkar*)[23] at 538.

What is necessary for a justifiable decision is that equals should not be treated unequally and the unequals should not be treated equally and the only differentiation that could be justified is, what could be classified on an intelligible basis and with a close *nexus* to the objective of the classification. Accordingly it is evident that, those who are similarly circumstanced, should be treated similarly.

On a consideration of the circumstances of this application, it is not disputed that all the officers referred to in the application, who were either granted or refused extensions of service, belonged to

the Bank. It is also not disputed that for all such employees the applicable Circular relating to their extensions was the Staff Circular No. 323/2001 dated 12.10.2001 (P2). Accordingly it is common ground that the extensions of service were considered on the basis of the provisions laid down in the aforementioned Circular to all the employees of the Bank without any reservations. Therefore regarding the extensions of service and the applicability of the Staff Circular No. 323/2001 (P2) there were no differentiation and all the employees of the Bank were grouped into one class. In such circumstances, it is apparent that there had been no classification to distinguish employees and to group them separately and therefore the Bank had regarded all of them as equals on the question of considering the employees, who had completed 55 years of age for extensions. Accordingly, all such applicant employees would have to be considered equally and there was no possibility for the petitioner to have been treated in a manner different to the treatment meted out to others, who were his equals.

Having said that the next question that has to be answered is the discretion that was vested with the Extensions of Service Committee, which was empowered to decide on extensions of service of the employees. There is no doubt that in todays context, for efficiency and smooth functioning of departmental management, discretionary power has to be conferred on administrative officers. However, such discretionary power cannot be absolute or uncontrolled authority as such would be arbitrary and discriminatory, which would negate the equal protection guaranteed in terms of Article 12(1) of the Constitution. It would therefore be essential that a decision making authority exercises its discretion taking into account relevant consideration on equal basis. Examining the discretionary powers and stressing the importance of the well-known House of Lords decision in *Padfield* v *Minister of Agriculture, Fisheries and Food* ((1968) A. C. 997), Lord Denning M. R. in *Breen* v *Amalgamated Engineering Union* ((1971) 2 Q. B. 175) stated that,

> "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant

considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v *Minister of Agriculture, Fisheries and Food*, which is a landmark in modern administrative law."

Accordingly, although the Extensions of Service Committee was granted the authority to consider the extensions of service of the employees of the Bank, they had to exercise their discretion according to law and undoubtedly having in mind the basic concepts stipulated in terms of Article 12(1) of the Constitution.

The petitioner submitted that upon reaching 55 years of age, the petitioner had preferred an application, which he had submitted to his Supervising Officer for his consideration. The aforesaid officer had recommended the petitioner's application. Thus it appears that the officer, who was functioning in a superior as well as in a supervisory capacity had thought the petitioner was a person, who should be recommended for his extension of service for a further year. As stated earlier, no reasons have been given for the refusal of the extension of service for the petitioner.

Clause 14(II) of the Staff Circular No. 323/2001 (P2) clearly states that the Extensions of Service Committee has to *'scrutinize and recommend'* all applications on a *'case by case basis'*. However, what has been produced before this Court does not indicate any kind of scrutiny and recommendations on a case by case basis.

Thus considering the aforementioned factual position of the petitioner's case, it is obvious that the Extensions of Service Committee had acted arbitrarily as well as unreasonably in relation to the application made by the petitioner.

There have been several cases pending before this Court regarding extensions of service by the employees of the Bank. As was stated in *W.P.A. Pathirana* v *The People's Bank* (*supra*, Bandaranayake, J.'s minority judgment), I am quite mindful of the competitive nature in the Banking sector and the efforts that have

to be made in meeting with the challenges of the new millennium. However, there cannot be any dispute that the 1st respondent Bank is an Institution of the State. Therefore irrespective of the competitive nature in relation to their functions, the actions of the Bank could be challenged in terms of the provisions pertaining to fundamental rights enshrined in the Constitution and therefore the management of the Bank will have to function having in mind such guarantees that are enshrined in the constitution with regard to fundamental rights. *Although the Bank undoubtedly should have its freedom to exercise its discretion in re-organizing their organization and for that purpose to limit the grant of extensions of service, this has to be carried out, without any infringement of the guarantees enshrined in Article 12(1) of the Constitution.* Article 12(1) of the Constitution, as pointed out earlier, deals with the right to equality and therefore the Bank, being a State Institution should act within the four corners of the aforesaid constitutional provision. The guarantee of equality before the law ensures that among equals the law should be equal and should be equally administered.

On a consideration of all the aforementioned circumstances, the only conclusion that could be drawn is that the refusal of the extension of service was taken arbitrarily and unreasonably and therefore I hold that the said refusal of the Bank to grant an extension of service to the petitioner is in violation of the petitioner's fundamental right guaranteed in terms of Article 12(1) of the Constitution. I accordingly declare that the petitioner was entitled to an extension of service for a period of one year with effect from 21.01.2004.

On a consideration of the totality of this matter, although there had been a violation of the petitioner's fundamental right in terms of Article 12(1) of the Constitution, it could not be possible for him to be given an extension of service since the petitioner has now retired from the service of the Bank.

In the circumstances since the petitioner will not be granted any extensions, I direct the 1st respondent Bank to pay to the petitioner a sum of Rs. 50,000/- as compensation and costs. This amount to be paid within one month from today.

Relief refused and compensation granted.