LETTERS PATENT APPEAL

Before Mehar Singh and S. B. Capoor, JJ.

UNION OF INDIA,—*Appellant*

versus

BHAGWANT SINGH,— *Respondent*

L.P.A. No. 32—D of 1962

1964

November, 24th.

Constitution of India (1950)—*Art.* 31—*Pension granted to public servant—Whether property—Cancellation of pension—Whether can be made without giving an opportunity of hearing to the pensioner—Administrative regulations—Whether can be enforced.*

Held, that 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.

Held, that administrative regulations are not law in the strict sense and no enforceable right can emerge out of the application or non-application of them.

Letters Patent Appeal under Clause 10 *of the Letters Patent against the order passed by the Hon'ble Mr. Justice Shamsher Bahadur on* 29*th January*, 1962 *in Civil Writ* 98-*D*/58 *accepting the* same with costs.

S. N. SHANKER, ADVOCATE, for the Petitioner.

RAUSHAN LAL AND S. P. AGGARWAL, ADVOCATES, for the Respondents.

JUDGMENT

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MEHAR SINGH, J.—In this appeal by the Union of India, appellant, from the order dated January 29, 1962, of Shamsher Bahadur, J., the facts are not a matter of controversy between the parties.

The respondent, Bhagwant Singh, was enrolled in the Army on August 1, 1939. He was on field service in Singapore Area between September 26, 1945, and January 30, 1946. He developed diabetes during his service in Singapore. On compassionate grounds he was brought back sometime in February, 1946. He was holding the rank of Subedar. In April, 1946, he was admitted in hospital for treatment. On June 27, 1946, the Specialist expressed this opinion in regard to his condition—"He is suffering from Diabetes Mellitus—Urine sugar controlled with diet and insulin and he has put on weight 4 lbs. in the last 2 weeks—general condition quite good. (He has completed his anti-syphilitic treatment and is on surveillance). He refuses any further treatment. To be invalided Cate. E". The respondent was then examined by the Medical Board on September 17, 1946, and was declared unfit for further service on account of diabetes mellitus, assessed at 50 per cent, incapable of improvement. The Board recommended that the disease, which manifested itself in September, 1945, in Singapore and progressively became worse, was aggravated by war service. This recommendation of the Board having been accepted, a provisional disability pension of Rs. 88-8-0 per mensem was sanctioned by the Controller of Military Accounts (Pension) with effect from November 8, 1946—Annexure A. Subsequently the respondent's claim for disability pension was finally accepted, though the pension was reduced to Rs. 82-8-0 per mensem for life, with effect from the very date stated in the provisional order—Annexure C. He continued to draw his pension till May 31, 1954. He was re-employed as a civilian clerk in the Air Force—C.O.D., Delhi, with effect from September 25, 1950, and it was in consequence of his re-employment that his case came to be reviewed. He was again examined by the Medical Board on September 30, 1954, when his disability was reassessed at 20 per cent, with effect from September 25, 1950. It was then considered that the disability—Diabetes Mellitus—was of a constitutional nature

generally not attributable to war service. This was done pursuant to Army Instructions 388/50, issued on December 9, 1950, in regard to modification of permanent disability pension when the disability changes in character or degree. The instructions say—

> "Under rule 374, Pension Regulations for the Army in India, Part II, 1940, in cases of disablement where the disability is certified to be incapable of improvement, a disability pension is awarded for life. Notwithstanding the provision of this rule, should a competent pension sanctioning authority decide, as a result of further medical examination of the individual for any purpose, that the disability is reduced or has disappeared or has become capable of improvement, the original disability pension which had been granted for life, will be modified correspondingly.
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> 2. This Instruction has effect from the 28th July, 1948, and supersedes A.I. No. 175 of 1949."

Consequently his pension was cancelled and he was informed by a letter of March 23, 1955,—Annexure D—by the Controller of Defence Accounts (Pensions) that the cancellation of his pension was effective from the date of its sanction, that is to say November 8, 1946. He, however, was not informed of the basis of cancellation of his pension. On enquiry he was directed by the Controller of Defence Accounts (Pensions) to seek the reason for the cancellation of his pension from the Officer-in-charge Records of the Unit with which he had last served. On reference to that officer, he was informed by a letter of May 27, 1955,—Annexure G—that his pension had been cancelled as the Resurvey Medical Board had re-assessed his disability at 20 per cent final. The respondent then preferred an appeal to the Adjutant General; General Headquarters, New Delhi, which on being referred to the Ministry of Defence, he was informed by a letter of April 10, 1956,—Annexure H—that there was no reason for alteration of the decision *qua* his pension. The respondent then in a petition under Article 226 of the Constitution questioned the legality and validity of the order cancelling his pension broadly on the grounds that the order had been made

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contrary to principles of natural justice as he was given no opportunity of hearing before the adverse order was made depriving him of his pension and that the deprivation of his pension is deprivation of property without authority of law and hence is violative of Article 31(1) of the Constitution.

A return was made to the petition by way of an affidavit of an Under-Secretary of the Ministry of Defence in which it was first stated that the appeal of the respondent having been rejected on April 10, 1956, the petition made on March 3, 1958, was delayed and should be dismissed on this account. Then it was pointed out that diabetes mellitus is a disability of constitutional nature and is generally not accepted as due to service, and the Resurvey Medical Board having re-assessed the respondent's disability at 20 per cent final, incapable of improvement, with effect from September 25, 1950, the Controller of Defence Accounts (Pensions) became suspicious. On that he made reference to the pension file of the respondent and found that the Medical Adviser (Pensions) had advised the rejection of the claim of the respondent, but the disability pension was sanctioned to him under some misapprehension or mistake. The return did not go into the details of the misapprehension or mistake nor did it reproduce the form of the Advice given by the Medical Adviser (Pensions). The last position taken was that the grant of pension to the respondent is under administrative regulations—Pension Regulations for the Army in India, Part II, 1940—and not under any statutory rule or regulation, it is a grant in the nature of bounty, and the appellant has full and complete power to withdraw it when misapprehension or mistake in the grant of the same is discovered at a later date as has been the case in regard to the pension granted to the respondent. It was also said that the pension granted to the respondent is not property or right in property, obviously with the approach that Article 31(1) of the Constitution has no application to this case. It was pointed out that claim to pension under the said Army Pension Regulations is not as of right and as it savours of a gift or a bounty by the State, so the respondent has no right which he can pursue in a petition under Article 226, the appellant having complete and absolute right to withdraw the pension at any time and without assigning any reasons. In the circumstances

there was no question of violation of any principles of natural justice and there was no occasion which called for any opportunity to the respondent to say anything before the order of cancellation of his pension was made. The further position taken was that this Court in a petition like the present could not possibly sit in appeal against the order made by the proper authority cancelling the pension of the respondent. This was followed by an application by the respondent saying that the averment of the Under-Secretary in his affidavit that the Medical Adviser (Pensions) had advised rejection of the respondent's claim to pension and that the disability pension was sanctioned to him under some misapprehension or mistake could not have been made by the deponent from personal knowledge and that this averment was absolutely incorrect. The respondent further said that the deponent should have filed a copy of the report of the Medical Adviser (Pensions) and should have at least stated in the affidavit that the averment in this behalf in it was based on such a report. After that the Under-Secretary filed a second affidavit pursuant to an order of this Court made on November 17, 1958. It was in this affidavit that the Under-Secretary explained that when in March, 1956, the appeal of the respondent was considered in the Ministry of Defence, "all the relevant service, and medical documents were obtained from the individual's Record Officer and the Controller of Defence Accounts (Pensions), Allahabad. These documents contained the original case file of the Controller of Defence Accounts (Pensions), Allahabad, on which the claim to disability pension was decided by him. This case file also contained one note-sheet, on which the original medical report, referred to in my previous affidavit filed in C.W. 98-D/58, was recorded". Then he averred that after the disposal of the appeal of the respondent, all the documents were returned to the Record Officer, Army Ordnance Corps, Secunderabad, by the Ministry of Defence on January 28, 1957, and further said—"Presumably, the note-sheet on which the original medical report was recorded, was also sent along wtih the above-mentioned documents. Afterwards on the 13th September, 1958, these documents were again forwarded by the Record Office to the Controller of Defence Accounts (Pensions), Allahabad, for considering the individual's gratuity claim". After the order of this Court of November 17, 1958, when an effort was made to trace the note-sheet on which was the

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medical report, it was not available either with the Controller of Defence Accounts (Pensions), Allahabad, or in the Record Office, or the records of the Ministry of Defence. The Under-Secretary proffers an opinion that the note-sheet has either been mislaid or lost while it was with the Ministry of Defence or in transit from the Ministry of Defence to the Record Office, Secunderabad, or from the Record Office to the office of the Controller of Defence Accounts (Pensions), Allahabad. The affidavit then refers to office noting, a copy of which was filed with the affidavit and is at page 43 of the paper-book, made at the time of the review of the pension case of the respondent. It is pointed out that at that time the dealing Assistant L. D. Chopra made a note that the Medical Adviser (Pensions) had made this report on the pension case of the respondent—"No W/S factor has aggravated this constitutional I/D". The copy of the noting by this officer shows that he was of the opinion that while the form of the original report of the Medical Adviser (Pensions) was as he has reproduced in the shape as above, but it was misread by somebody as—"The W/S factor has aggravated this constitutional I/D". It is stated in the affidavit of the Under-Secretary that this noting by the dealing Assistant was scrutinized by the then concerned Under-Secretary. It appears that this ingenious change of the word 'The' into 'No', has been the undoing of the respondent. The original report, a piece of paper, obviously has now been missed. At the hearing it has not been actually suggested, but there was a tendency towards considering that the respondent might have been responsible for the removal of that paper. However, that seems to be not quite possible because all the time the record remained either with the Ministry of Defence or in the Record Office or with the Controller of Defence Accounts (Pensions). This was the most crucial document in the case and it is surprising that it should be found missing, when the basis of the order of cancellation is that very report of the Medical Adviser (Pensions). It is at this stage that an explanation is rendered about what is meant by misapprehension and mistake under which the pension was granted to the respondent and which led to the cancellation order, as referred to in the first affidavit of the Under-Secretary. It is not quite clear why the respondent had to make an application to draw out this information

from the officer of the appellant. The original report not having been produced in this Court, I am not convinced that copy of the office noting of the dealing Assistant is any material that is helpful in this respect or is a sufficient explanation in support of the order cancelling the pension of the respondent.

The learned Single Judge following *ex parte HUGGINS,* In re *HUGGINS* (1), came to the conclusion that the pension granted to the respondent is 'property' and so he has a fundamental right under Article 31(1) of the Constitution of not being deprived of the same save by authority of law, and consequently he can maintain the petition under Article 226 for the protection of that right. With regard to the argument on the side of the appellant that the respondent had no statutory right to receive pension in view of Army Instructions 388/50, revising regulation 374 of the Pension Regulations for the Army in India, Part II, 1940, the learned Judge observed that those instructions could not apply to the present case bacause the respondent was in enjoyment of the pension as a matter of right, a right which according to old regulations, as stood before July 28, 1948, could not even be modified. The learned Judge also repelled the objection on the side of the appellant in regard to the delay in the making of the petition following *Basheshar Nath* v. *Commissioner* of *Income-tax* (2). In the result the learned Judge accepted the petition and quashed the order cancelling the pension of the respondent. It is against this order that the appellant has come in appeal under clause 10 of the Letters Patent.

The learned counsel for the appellant refers to Pension Regulations for the Army in India, Part II, 1940, and first points out that there is nothing in those regulations which shows that the same have been issued by the appellant pursuant to any statute. He presses that those regulations are merely administrative in nature having no statutory backing. We have not been referred by the opposite side to any statutory provision pursuant to which those regulations have been made. Subject to this limitation of approach of both sides to these regulations, the consideration of the appeal of the appellant has proceeded on the

(1) (1882) 21 Ch. D. 85.

(2) A.I.R. 1959 S.C. 149

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assumption that those regulations have not been made pursuant to any statutory provision and are thus correctly described by the learned counsel for the appellant as administrative regulations. The obvious effect of this is that the regulations are not law in the strict sense in that no enforceable right can emerge out of the application or non-application of them. In these regulations, it is regulation 365 which deals with the grant of pension in case of disability attributable to military service in a field service area. The main part of the regulation provides that an Indian Commissioned Officer.....whose disability is 20 per cent or over and is certified to be attributable to military service in a field service area may be granted a disability pension, and then follow the elements forming basis of such a pension. Obviously the regulation is couched in a discretionary language, but considering the nature of those regulations, even if it was couched in an imperative language, nothing pursuant to this regulation could possibly be enforced through a Court. The respondent points out in the petition that, in any case, even after the report of the Resurvey Medical Board, his disability was still found to be 20 per cent, and so his pension should not have been cancelled. To this the reply in the return is that this was a discretionary matter with the appellant and the respondent has no rights, and then emphasis is laid on the misapprehension and mistake under which the pension was initially granted to the respondent. It has already been shown that the material to support the last referred to matter is not available and for that blame can hardly be directed towards the respondent. The object of the learned counsel for the appellant in pressing that there is no right under the regulations to a pension has been to stress that the pension granted to the respondent was in the nature of a gift or a bounty. The learned counsel for the appellant has then made reference to the Pensions Act, 1871 (Act 23 of 1871), Sections 4, 5 and 6, to show that jurisdiction of a civil Court to entertain any suit relating to any pension is expressly barred, and that, though a claim to pension can be preferred to the Collector or other officer named in section 5, a civil Court is not competent to try such a claim and can only take cognizance of it on a certificate from the Collector or such officer that it be tried, with this express provision in section 6 that it "shall not make any order or decree in any

suit whatever by which the liability of Government to pay any such pension.....as aforesaid is affected directly or indirectly". Section 11 of this very Act exempts a pension from liability to seizure, attachment or sequestration by process of any Court, and section 12 declares assignment of it null and void. In this connection there has also been reference to section 6 of the Transfer of Property Act, 1882 (Act 4 of 1882), which provides that property of any kind may be transferred, except as otherwise provided by that Act or by any other law for the time being in force. In this section there follow ten clauses and one of those clauses is (g) that reads—"Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions cannot be transferred". The object of the learned counsel for the appellant in making reference to these statutes has been that as (a) no right to pension can be enforced through a civil Court, (b) a pension cannot be attached, and (c) it cannot be transferred, so it follows that a pensioner has no title or right to pension and it cannot possibly be 'property' as that word is used in Article 31(1) of the Constitution, because, according to the learned counsel, all the usual attributes of 'property' do not exist in relation to a pension. In this respect reliance is also placed *on Shaukat Husain Beg Mirza* v. *State of Uttar Pradesh* (3), in which, after referring to the provisions of sections 4 and 11 of Act 23 of 1871, the learned Judge observes—"These provisions clearly show that the pension of a person is not his property and he has no vested right over it. It is given by way of a bounty for past services mainly to assist the pensioner in providing for his daily needs". But the case has to be understood and appreciated in the light of its own facts, as the claim in that case by the petitioner in a writ petition under Article 226 was not *qua* a pension but at a stage before the grant of pension questioning an order fixing his salary which was expected to affect the ultimate pension that was going to be granted to the petitioner. So in that case the nature of a pension granted was not in question. In my opinion, the provisions of Act 23 of 1871 do not advance the argument for the appellant because but for the express provisions of that Act a claim to pension would have been subject of *lis* before an ordinary civil Court and that could only have been on the basis of a pensioner having a right

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

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to pension. If it was not so, it would not have been necessary to enact that statute. It is too much to accept an aproach by the learned counsel for the appellant that the whole Act 23 of 1871 was enacted as a measure of abundant caution. This is obviously not so. Similarly section 6 of Act 4 of 1882 deals with the transfer of property and in this clause (g) to which reference has been made by the learned counsel for the appellant deals with stipends and political pensions barring the transfer of the same. But merely because assignability of pensions is barred by statute that is no ground that it is not property if it is otherwise so. In section 6, clause (c) refers to a bar on the transfer of an easement, and nobody will deny that, whether or not an easement is a property, it certainly is a right in or over property. It does not cease to be so merely because it cannot be assigned subject to the provisions of section 6 of Act 4 of 1882. The list of rights and properties that are not assignable in section 6 of this Act itself speaks that but for such negative express provision those properties and rights would have been transferable. A restriction imposed by section 12 of Act 23 of 1871 is of the same nature as negative provision in section 6 of Act 4 of 1882 on the transfer of certain properties or rights in properties and the immunity or exemption provided by section 11 of Act 23 of 1871 does not derogate from a pension being property, if it otherwise is so. In *Rajah Yenumula Suryanarayana Murthy Dora* v. *State of Madras* (4), the disputed claim to pension was among the members of the family, but the learned Judges, with reference to section 5 of Act 23 of 1871, have held that such a claim involved a basic element of a legal right. Therefore, the statutory duty cast on the officers enumerated in that section is to determine the legal rights of persons concerned. It is true that in that case the claim was not against the State Government, but on principle how can such a claim be of a different nature. The learned counsel for the appellant has relied upon this case in another connection, which is that when a pension is not in recognition of any right but as a matter of grace or bounty, an order with regard to it originally made can be reconsidered if the original order proceeded on a misapprehension as to basic facts. The object of the learned counsel has been that in this case also the grant of pension to the respondent

(4) A.I.R. 1959 A.P. 487.

had proceeded on misapprehension or mistake, but, while if this was so, this Court would not go into the merit of question in a petition of this type; in the present case the original record in which was given the opinion of the Medical Adviser (Pensions) has not been available and reference has already been made to circumstances in which it came to be missing, there is the question of the respondent not having been given an opportunity to meet the basis for cancellation of his pension. So in this respect this case does not advance the argument on behalf of the appellant. The whole scope of argument then turns upon one and one question only, whether or not the pension granted to the respondent and enjoyed by him for many years is 'property' as that word is used in Article 31(1) of the Constitution ?

In *Huggins case,* a retiring pension was granted to Mr. H. J. Huggins on his retirement from the position of Chief Justice of the colony of Sierra Leone. Afterwards he having been unsuccessful in business was adjudicated a bankrupt. Thereupon the trustee in the bankruptcy applied to the Court for an order declaring that the bankrupt's pension vested in the trustee as part of the property of the bankrupt, or, in the alternative, that the trustee should receive from the Treasury or the Crown agents for the colonies the amount of the quarterly instalment of pension immediately falling due or such part thereof as the Court should deem just and reasonable, and that the trustee should receive until the further order of the Court the future quarterly instalments of the pension, as they might from time to time become due and payable, or such portion of each such quarterly instalment as to the Court might seem just and reasonable. In answer to a request by the Court, the Secretary of State for the Colonies stated that there was no statute or ordinance of the colony regulating the grant of pensions to persons having held offices in its service but that retiring pensions and compensation allowances on abolition or resignation of office were payable out of the revenue of the colony as awarded by the Secretary of State, who declined to recognize assignments of such colonial pensions. In considering the argument that the pension of Mr. N. J. Huggins not being assignable and neither the colonial office nor the Government of the colony being compellable to pay it, it did not

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vest in the trustee because nothing passed to a trustee in bankruptcy but that which was assignable at law and recoverable by legal process, and the position urged on the opposite side being that the pension was the property of Mr. H. J. Huggins, Jessel, M. R. observed—"When a man is appointed to an office of this kind he is told that he will receive a salary of such an amount and that on his retirement he will be entitled to a pension, and he accepts the office on these terms. Possibly the exact amount of the pension may not have been mentioned in this case, but the appellant accepted the office partly in consideration of the pension. It has been argued, first, that this pension is not 'property' of the bankrupt. I think it is. It is true that the contract under which he accepted the office may not be enforceable in the Courts either of this country or of Sierra Leone. I think that is so. But that does not decide the question. There are many cases in which property arises from the contract, quite independently of the fact that no judicial tribunal can enforce it". The learned Master of the Rolls then proceeds to give a number of instances in support of this, and one of the instances referred to is in this observation—"Just in the same way the salaries and pensions of servants of the Crown in this country cannot be paid until they are voted by Parliament, and yet no one would say that they are not the property of the persons who receive them. There are, no doubt, some salaries and pensions which are not assignable. But when this is so, it is always referable to one of two grounds. It is said to be contrary to public policy that payments made to induce persons to keep themselves ready for the service of the Crown, as the half-pay of officers in the army or navy, or payments for actual service rendered to the Crown, should be assigned. The other class of cases is that of pensioners, like the retiring allowance of a beneficed clergyman, which are by statute expressly made not assignable. But still I think these are all property". In that case the grant of pension had no basis either in a statute or in any statutory rule, it was a grant as a matter of grace or bounty, and a claim to it was neither enforceable through a Court nor assignable, and yet the learned Master of the Rolls held the pension to be 'property'. The present case of the respondent is not a whit different even on facts from that case. The ratio of that case was relied upon by the learned Judges in *Venkat Munga Bai* v. *State*

of *Hyderabad* (5), in facts and circumstances not substantially different, and the learned Judges found support for their opinion in this respect by two decisions of their Lordships of the Supreme Court reported as *Commissioner Hindu Religious Endowments* v. *L. T. Swamiar* (6), and *Dwarkadas Srinivas* v. *Sholapur Spinning and Weaving Co. Ltd.* (7), in the latter of which their Lordships have observed that the word 'property' in Article 31 of the Constitution be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. The learned counsel for the appellant, in the face of these two cases, has contended that in neither case was claim to pension denied by the Government or the grantor, and the observations made by the learned Judges only deal with cases in which there was a dispute about pension or the right to it between private parties. He contends that as soon as there is a denial of right to pension, as in this case by the cancellation of the pension of the respondent, on the mere denial or cancellation of the pension, the pension ceases to be 'property'. The contention is apparently untenable, the character of the pension as 'property' cannot possibly undergo such mutation at the whim of a particular person or authority. It is in fact the very act whereby the pension of the respondent has been cancelled that has been the subject of challenge in the petition by the respondent under Article 226. So the pension granted to the respondent and enjoyed by him for many years is his property. It has been the admitted stand on the side of the appellant that the cancellation of the pension of the respondent has not been pursuant to any law, and what has been stressed is that as it was a gift or a bounty, it could just be taken away because the respondent had no right to it. The pension of the respondent is 'property' and according to Article 31(1) he can only be deprived of it by authority of law and that is what has not happened in the case of the respondent. In this respect there is no reason whatsoever for interference with the approach of the learned Judge.

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(5) A.I.R. 1955 Hyd. 44.

(6) A.I.R. 1954 S.C. 282.

(7) A.I.R. 1954 S.C. 119.

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It is not denied that the respondent was given no opportunity of hearing before the order of cancellation of his pension was made. The consequence of the order has been deprivation of the pension to the respondent so that the act cannot be said to be administrative and is at least quasi-judicial. The respondent was entitled to hearing before such an adverse order was made depriving him of his pension. If he had been given an opportunity of a hearing, he might well have shown that the report of the Medical Adviser (Pensions) was being misread and that in fact the word with which that report started was 'The' and not 'No'. He would have also pressed, as he does in the petition, that, in any case, even if his disability has been reduced to 20 per cent, his case for pension still comes under regulation 365 of the Army Pension Regulations. The Return merely shows that generally diabetes mellitus is a constitutional disease, but the respondent may have succeeded in showing that this was a special case and his condition was aggravated by the stress and anxiety of war conditions in Singapore. It cannot be said that such a consideration is not relevant in this respect. If the respondent had been given an opportunity of hearing, he might well have convinced the appropriate authority that there was really no ground for the cancellation of his pension. So the order of cancellation of the pension of the respondent has been made contrary to principles of natural justice.

There is the question of the delay in the respondent filing the petition, but the learned Single Judge was not disposed to dismiss the petition on this ground and, in the circumstances of the case, there is no substantial reason why we should take a different view in this appeal.

The consequence is that this appeal fails and is dismissed with costs.

Capoor, J.

S. B. CAPOOR, J.— I agree.

B.R.T.