

SURANGANIE MARAPANA  
v.  
THE BANK OF CEYLON AND OTHERS

SUPREME COURT.  
DHEERARATNE, J.  
WIJETUNGA, J. AND  
ANANDACOOMARASWAMY, J.  
S.C. APPLICATION 749/96 (F.R.)  
JUNE 17 AND 30, 1997.

*Fundamental Rights – Extension of Service – Employer's power to refuse an Extension – Duty to act fairly – Article 12(1) of the Constitution.*

The petitioner had an unblemished record of 25 years of service at the Bank of Ceylon. She was fully qualified and had received special training in Banking Law and practice and allied subjects in London, Italy and Singapore. She was the Chief Legal Officer of the Bank from 1.11.88 during which period she had enhanced the efficiency and streamlined the functions of the Legal Department. As she was to reach the age of 55 years on 27.11.96 she applied to the Bank on 25.5.96 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 lapse of a further month, the petitioner was informed on 22.10.96 that her application had been rejected and she would be retired from 27.11.96. 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.

**Held:**

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. Instead, a veiled suggestion was made that the efficiency of the Legal Department was not up to expectations. This insinuation was baseless and unwarranted. Hence, the refusal to grant the extension of services sought was arbitrary, capricious, unreasonable and unfair. It was also discriminatory and violative of the petitioner's right to equal protection of the law under Article 12(1) of the Constitution.

**Cases referred to:**

1. *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) A.C. 997.
2. *Wijepala v. Jayawardene, S.C.* Application 89/95 S.C. Minutes 30 June 1995.
3. *Manage v. Kotakadeniya*, 1997 1 SLR. 264.
4. *Silva v. Upasena S.C.* Application 472/96 S.C. Minutes 27 June 1997.

**APPLICATION** for relief for infringement of fundamental rights.

*L. C. Seneviratne, P.C.* with *S. Mahenthiran* for the petitioner.

*E. D. Wickremanayake* with *L. V. P. Wettasinghe* for 1st to 8th respondents.

*Cur. adv. vult.*

August 28, 1997

**WIJETUNGA, J.**

The petitioner who was the Chief Legal Officer of the 1st respondent ('the bank') complains of the violation of her fundamental rights guaranteed by Articles 12(1) and 12(2) of the Constitution, by reason of the bank's refusal to grant her an extension of service for an initial period of one year from 27.11.96, on reaching the age of 55 years. Leave to proceed has been granted in respect of the alleged infringement of Articles 12(1) and 12(2).

The petitioner is an Attorney-at-Law enrolled on 2.2.66 and is also a Solicitor of the United Kingdom. She joined the service of the bank as an Assistant Law Officer on 1.12.71 at the age of 30 years and was confirmed in service on 1.12.72. She was promoted to the grade of Senior Assistant Law Officer on 9.6.78 and as Legal Officer on 1.8.82. She became the Chief Legal Officer on 1.11.88, having already functioned as the head of the Legal Department since 1986, upon the retirement of the officer holding that post. She had acted for the Chief Legal Officer on several occasions even prior to 1986.

During her service at the Legal Department of the bank, she had undergone training in Banking Law and Practice at Farrar & Co.,

Solicitors in London in 1984, at the IDLI, Italy in 1990 and the Euro Money Financial School in Singapore in 1992.

The Legal Department of the bank, the petitioner states, consists of 33 Legal Officers and other support staff and also has provincial and branch legal units outside Colombo. In addition to being responsible for instituting legal action on behalf of the bank, the Legal Department has to advise the bank on all aspects of the working of the bank, particularly on changes in the law and its implications on banking operations, on disciplinary and industrial relations, on international transactions, in particular in the Foreign Currency Banking Unit, the Treasury and the International Division, and on the Bank Committees. It is also responsible for the training of the bank staff on legal aspects of banking operations and the training of the legal officers in their functions and duties in the Legal Department both locally and abroad.

The petitioner further states that since she commenced her duties as Chief Legal Officer, she has been responsible for the establishment and functioning of a number of schemes which have been set out in detail in paragraph 4(vi) of the petition.

She claims that during her period of service since December, 1971, she has never been found wanting in the performance of her duties and has an unblemished record of service with the bank.

The petitioner says that she is entitled to apply for an extension of service on reaching the age of 55 years under Finance Ministry Circular No. MF/EB/100(1) dated 8.2.79 (P2). Although in terms of the agreement (P1) dated 1.12.71 the petitioner was required to retire from the service of the bank on attaining the age of 55 years, the Circular (P2) aforesaid enables her to continue in service up to the age of 58 years.

As the petitioner was to reach the age of 55 years on 27.11.96, she applied to the bank through its General Manager, by letter dated 24.5.96 (P6), for an extension of service for an initial period of one year. The bank, by letter dated 22.10.96 (P4), replied through its General Manager declining her request and intimated that it had

been decided to retire her from service from 27.11.96. No reason for such refusal was given.

She claims that it was the established practice of the bank to grant extensions of service to officers who sought such extensions on reaching the age of 55 years and has cited a number of instances where such extensions have been granted, including those of officers of comparable rank in the bank's service. In view of her unblemished and extensive record of service and the aforesaid established practice of the bank, she claims that she had a legitimate expectation that her application would be favourably considered and the extension would be granted. As there were no valid or justifiable reasons for the Board of Directors to discriminate against her, she believes that the reason for such unequal and discriminatory treatment accorded to her is based on political grounds in identifying her as a supporter of the United National Party.

In this regard, she refers to an earlier instance in 1995 where the Minister for Livestock Development and Rural Industries appointed her as Chairperson of the Handicrafts Board by (P5), when the Sri Lanka Freedom Party Lawyers' Association sent petitions against the said appointment to the President, in her capacity as Minister of Finance and the Ministry of Finance refused the secondment of the petitioner to function as Chairperson of the said Board by (P6).

The Chairman of the Bank (2nd respondent) filed an affidavit dated 10.12.96 on behalf of himself and the 1st and 4th to 8th respondents. He stated that the 3rd respondent was out of the Island. He admits the fact of the Finance Ministry Circular (P2) and that the petitioner is in the category of a Deputy General Manager, but denies the other averments in paragraph six of the petition. It is his position that no reasons for refusing an extension of service need be given. As regards the time taken to reply the petitioner's request for an extension of service, he states that it was "because it took time to carefully examine, evaluate and decide on her request".

Answering paragraph 11 of the petition where the petitioner gave particulars of eight officers, (two of whom were of a comparable grade but had joined the bank's service after the petitioner), who had been granted extensions of service, the 2nd respondent states that

"the applications for extension made by each of the several employees referred to therein were separately considered by the Board of Directors and in each of the said cases the Board decided that there were exceptional circumstances warranting the extensions". He has annexed marked (2R6) (a) to (i) the memoranda addressed to the Board of Directors in respect of each of the said applications and has drawn the attention of the Court to the fact that all the said applications were considered and decided on the basis of a Board decision dated 13.2.89, in terms of which extension of service beyond the age of 55 years "would be considered by the Board only under exceptional circumstances, depending on the merits of each case ..." The memorandum relating to the petitioner has been produced marked (2R6) (j).

Further answering the averments in the petition, he states that the Circular (P2) which permitted extensions up to the age of 58 years on the basis of annual extensions from the age of 55 years is not binding on the bank, by reason of Finance Ministry Circular (2R1) (annexed to his affidavit dated 24.11.96) which had "conveyed a decision made by the Government to (a) exempt the Bank of Ceylon and the People's Bank from the provisions of Part II of the Finance Act No. 38 of 1971 and from all Treasury and Public Administration Circulars; and (b) grant these banks 'operational autonomy' to enable them to conduct their business on a commercial basis."

He further avers that "when the petitioner applied to be released to accept an appointment as Chairperson of the Sri Lanka Handicrafts Board for a period of three years, she opted out of serving as the Chief Legal Officer with effect from May, 1995, which is even before her 55th date of birth." While reiterating that the 1st to 8th respondents had nothing to do with the refusal to release the petitioner from the service of the bank to accept this appointment, he states that they had no political bias whatsoever for or against the petitioner. He asserts that the bank had the right to terminate the services of the petitioner at the age of 55 years after a *bona fide* consideration of her application for an extension of service. He claims that "the refusal to extend her service 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 at the present time".

In support of the bank's contention that it has been exempted from Treasury and Public Administration Circulars, the bank has by motion dated 25.6.97 tendered to Court, marked (2R7) (a) to (2R7) (d), copies of correspondence between the then General Manager of the bank and the Ministry of Finance. It appears that by (2R7) (b) dated 4.5.92, clarification had been sought by the General Manager of the bank from the State Secretary for Finance in regard to the implementation of Treasury Circular No. EA 02/BC/PB/01 on Restructuring of the Bank of Ceylon and the People's Bank (2R1), annexing thereto a list of 13 matters of the Personnel Department referred to the Ministry of Finance for approval (2R7) (c). Item No. 1 thereof relates to extension of service of employees beyond the age of 55 years in the grade of Assistant General Managers and above.

The State Secretary for Finance, by his letter dated 20.5.92 (2R7) (a), states that he had discussed this matter with the Secretary to the Treasury and that "the thirteen personnel items mentioned by you should also be handled by the Board of Directors of your Bank other than item two where official travel by employees overseas for conferences, seminars, training etc. for which Ministry and Government approval should be obtained as at present."

It would be relevant at this stage to consider the manner in which the Board of Directors had granted extensions of service beyond the age of 55 years. It appears from (2R6) (a) to (2R6) (i) that the practice was for the Personnel Department to submit a memorandum to the Board of Directors under the hands of the Asst. General Manager, Personnel and the Deputy General Manager, Human Resources setting out the relevant material for the consideration of the Board, together with the bio data submitted by the officers concerned. Where an extension of service was recommended, such a memorandum included a 'draft minute' in these terms: "**DRAFT MINUTE** – Considered the Memorandum of the Assistant General Manager (Personnel) and the Deputy General Manager (Human Resources) dated (...) and decided that the Board will not exercise its option to retire (...) from the Bank's service but to extend his/her service for a further period of one year with effect from (...) under exceptional circumstances."

The memorandum submitted in respect of the petitioner by the Personnel Department dated 12.9.96, (2R6) (j) also contains the identical draft Board Minute.

In respect of an officer referred to in the memorandum (2R6) (d) dated 5.1.94, who had been granted three annual extensions of service beyond the age of 55 years, but the Personnel Department did not recommend an extension of service beyond the age of 58 years, the draft Board Minute was in the following terms: "Considered the memorandum of the Assistant General Manager (Personnel) and Deputy General Manager (Human Resources) dated 5th January 1994 in regard to the extension of service of (name and designation of officer) and the Board decided to exercise its option to retire (name of officer) from the Bank's service with effect from 07.03.1994."

It is significant that the Board of Directors had consistently followed the recommendations of the Personnel Department in exercising its option to grant or refuse an extension to any officer, and was guided by the memorandum submitted to the Board and the draft Board Minute appended thereto. But, in regard to the petitioner, for reasons best known to the Board of Directors, it had departed from this established practice and decided not to grant her an extension of service beyond the age of 55 years, (being the very first extension applied for), though the extension had been recommended by the Personnel Department in its draft Board Minute, **under exceptional circumstances**. The Board did not assign any reason for such an unusual step being taken.

Undoubtedly, the Board of Directors is not bound to accept each and every recommendation of the Personnel Department and can in appropriate circumstances take a decision contrary to such recommendation. But, as stated in de Smith's 'Judicial review of administrative action' 4th edition, page 238 et seq., it is a long settled principle governing the exercise of discretion that persons exercising such power must act fairly. In general, it means a duty to observe the rudiments of natural justice in the exercise of administrative functions. Not only should there be a fair evaluation of the matter before it, but it also imposes a duty to be impartial and not to discriminate on unacceptable grounds. Such power must necessarily be exercised reasonably.

Although the 2nd respondent has produced certain decisions of the Board of Directors in support of some of the averments in his affidavit, curiously, the most vital decision of the Board pertaining to this matter, viz. the grounds of refusal of an extension of service to the petitioner, has not been produced, though the 2nd respondent states that it was a decision unanimously reached after a careful evaluation of the petitioner's application.

In that context, the sequence of events which culminated in the refusal of the extension assumes significance. The petitioner applied to the bank through its General Manager of an extension of service on 24.5.96 (P3). The Board of Directors arrived at the decision to refuse the said application for extension of service four months later on 27.9.96. The General Manager (8th respondent) took a further one month almost to convey that decision to the petitioner by letter dated 22.10.96 (P4), leaving the petitioner barely one month to retire from the bank, an institution which she had served for almost twenty five years. This inordinate delay has not been satisfactorily explained by the bank.

It is the petitioner's position that it has been the established practice of the bank to grant extensions of service to officers who had reached the age of 55 years, if they applied for extensions. The bank does not deny, and the documents furnished support, the petitioner's position that extensions have in fact been granted to certain officers even up to the 58th year. The bank seeks to justify the refusal by stating that the task of determining whether or not there are exceptional circumstances is entirely a matter for the Board of Directors.

But, the question arises whether, in a situation such as this, where the granting of an extension is in the discretion of the Board of Directors, it is obligatory for the Board to give reasons in the event of its refusal to grant such extension; more so, in the circumstances of the present case where the Personnel Department had, in keeping with the established practice, recommended the grant of the extension sought by the petitioner, as is evidenced by the draft Board Minute (2R6) (j).

What was the fresh material available to the Board to take a contrary view? If there was new material which justified the Board's conclusion that there were no exceptional circumstances to grant the petitioner an extension of service, from which source did the Board obtain such material? If, on the other hand, the Board relied on the same material as contained in the 'Memorandum to the Board', did the Board assign any reasons for rejecting the recommendation of the Corporate Management? Why has the Board refrained from submitting a copy of that decision to the Court? Despite a surfeit of other material placed by the bank before Court, these questions still remain unanswered!

The bank's contention that the petitioner's appointment as Chairperson of the Sri Lanka Handicrafts Board and the request for her release from the services of the bank on a secondment basis indicate that the petitioner herself thought that the bank could dispense with her services even long before she reached the age of retirement, without the bank's Legal Department suffering a serious handicap, is without merit. The question here is not whether her services were indispensable. Her selection for a higher appointment under another Ministry indicates that her services were sought after even elsewhere. If the Legal Department could have managed without any serious handicap in the event of her temporary release, it is indeed a tribute to the sound footing on which the petitioner had placed that Department. There is nothing unusual in an officer agreeing to accept an appointment on a secondment basis, which would better her prospects. But, what the Corporate Management had to consider was whether there were exceptional circumstances to retain her services at the stage when she applied for an extension.

In fact, the bank has even granted an extension of service beyond the age of 56 years to an officer of a grade comparable to that of the petitioner (2R6) (a), though that officer had held an appointment abroad, on no pay leave, for a considerable length of time. If that was no bar to being granted an extension of service, one fails to see how the petitioner's selection for appointment as Chairperson of the Handicrafts Board on secondment could have been viewed with disfavour by the bank, in considering her application for an extension of service.

It was the submission of learned counsel for the petitioner that the contention of the respondents that the bank was conferred autonomous powers by the Circular (2R1) cannot be sustained for the reason that a plain reading of that Circular makes it evident that it was issued not for the purpose of granting the bank autonomous powers in respect of its administration, but to grant autonomy in regard to its commercial activities. He relied *inter alia* on the documents produced in these proceedings relating to the question of release of the petitioner to take up the post of Chairperson, Sri Lanka Handicrafts Board, in support of this proposition. He submitted that the letter (2R4) from the 2nd respondent to the Secretary, Ministry of Finance, which contains the decision of the bank to recommend the release of the petitioner on a secondment basis, (2R5) by which the 2nd respondent informs the petitioner that her release from the bank's service will be recommended to the Ministry, and the letter (P6) from the Deputy Secretary to the Treasury refusing the petitioner's release to take up the aforesaid appointment, clearly show that the decision to release the petitioner is one that is taken by the Ministry and not by the Board, which only has the power to recommend. He therefore submitted that these factors alone militate against the contention that the Circular (2R1) vested unfettered powers in the Board of Directors with regard to its administration. It was his position that (2R1) does not revoke the Circular (P2), nor can the Board decision (2R3) supercede that Circular and hence the attempts by the bank to bypass the Circular (P2) should be rejected.

However, the letter (2R7) (b) dated 4.5.92 by the then General Manager of the bank, together with the annexures (2R7) (a) to (2R7) (d), and the response of the Ministry of Finance through the State Secretary for Finance by his letter dated 20.5.92 (2R7) (a), deal specifically with Treasury Circular No. EA/02/BC/PB/01, i.e. (2R1). In (2R7) (a) the State Secretary for Finance prefaces the decisions conveyed thereby with the statement that he discussed this matter with the Secretary to the Treasury, thus indicating that those decisions had been taken in consultation with the Secretary to the Treasury.

I do not consider it necessary for the purposes of this case to decide whether the Circular (P2) continued to apply to the bank or whether the bank enjoyed unfettered autonomous powers under the

Circular (2R1). The decision of this case rests on **whether the petitioner had a legitimate expectation** of being granted an extension of service. The power to grant an extension under either Circular is discretionary, though the degree of discretion may vary.

The bank had, by its Board decision (2R3), recognised that extensions of service beyond the age of 55 years would be considered, but only under exceptional circumstances, depending on the merits of each case. So, the Court has to examine whether there had been a proper exercise of that discretion.

Having sought clarification and guidance with regard to (2R1) from the Ministry of Finance, the bank was obliged to follow the instructions contained in (2R7) (a), which had the stamp of authority of that Ministry, under whose purview the bank was. The position therefore was that, when the petitioner's application came to be considered by the Board, extensions of service beyond the age of 55 years of employees in the grade of Assistant General Manager and above were to be handled by the Board of Directors of the bank, and Ministry or Government approval was not necessary therefore.

That the petitioner had a legitimate expectation that her application for an extension of service would be considered fairly and on its merits is beyond question. As stated above and as is evidenced by the draft Board Minute (2R6) (j), the Personnel Department recommended that the petitioner's service be extended for a period of one year with effect from 27.11.96 **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 30.8.96 (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 when the decision of the Board was challenged by the petitioner.

Wade & Forsyth: Administrative Law, 7th edition, dealing with the principle of reasonableness states at page 390 that it "has become one of the most active and conspicuous among the doctrines which have vitalised administrative law in recent years ... Its contribution to administrative law on the substantive side is equal to that of the principles of natural justice on the procedural side."

Having referred to a number of authorities relevant thereto, the authors go on to say at page 391 that "the common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way ..."; and at page 393 that "there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion."

On the aspect of abuse of discretion, the authors refer to the case of *Padfield v. Minister of Agriculture, Fisheries and Food*<sup>(1)</sup> and state at page 413 that "there could scarcely be a better example that statutory powers, however permissive, must be used with scrupulous attention to their true purposes and for reasons which are relevant and proper." They further state that "the House of Lords also rejected the Crown's argument that the minister need have given no reasons and that therefore such reasons as he volunteered to give could not be criticised. Going still further, the House declared that if in such a case he refused to give any reasons, the court might have to assume that he had no good reasons and was acting arbitrarily. In other words, the minister may not be able to disarm the court by taking refuge in silence. In this way the court would have power to impose, in effect, an obligation to give reasons for discretionary decisions."

To my mind, these dicta apply with equal force to the decisions of the Board of Directors of the bank. As pointed out earlier, the bank has failed to submit to this Court the decision of the Board pertaining to the refusal of an extension of service to the petitioner, despite that decision being challenged in these proceedings. The 2nd respondent Chairman's averment in paragraph 21 of his affidavit dated 10.12.96 that "the refusal to extend her services was done

*bona fide* and unanimously after a careful evaluation of her application ..." is no substitute for the Board decision, which presumably would have incorporated the reasons therefore. The bank was duty bound to disclose the reasons to Court; and the best evidence perhaps of the 'careful evaluation' to which the petitioner's application had been subjected, (incidentally over a period of two months), would have been the minutes of such Board meeting. The Board having failed to discharge its obligation to give reasons, the Court is well entitled to assume that it had no good reasons for such decision and was acting arbitrarily. Having regard to the unusual step taken by the Board in acting contrary to the recommendation of the Corporate Management without assigning any reasons, such an inference becomes irresistible.

I would, in this context, refer to some of the recent decisions of this Court which have a bearing on the matter under consideration.

In *Wijepala v. Jayawardene*<sup>(2)</sup> where the petitioner who was the Chief Valuer complained that his fundamental right under Article 12(1) had been violated because the Executive did not permit him to enjoy an extension of service which had been duly granted to him, Fernando, J. held that the decision was arbitrary and capricious and directed the State to permit the petitioner to function as Chief Valuer and also awarded him arrears of salary, compensation and costs.

In the course of that judgment, Fernando, J. stated *inter alia* as follows: "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 this case I do not have to decide whether the failure to do so vitiated the decision. However, when this Court is required 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."

Again, in *Manage v. Kotakadeniya and others*<sup>(3)</sup>, where a Post Master's application for an extension of service upon reaching the age of 55 years was refused, Amerasinghe, J. having noted that though the Chief Post Master, Nugegoda and the Divisional Superintendent of Posts, Colombo had recommended the extension of the petitioner's service, the 1st respondent had retired the petitioner from service, dealt with the circumstances relevant thereto and was of the view that "the refusal to extend the services of the petitioner was not based on adequate grounds". Accordingly, he quashed the order of retirement made by the 1st respondent, observing that the petitioner had been the victim of unequal treatment and discriminatory conduct, and awarded him compensation and costs.

I cannot accept the 'reasoning' of the bank when it states in its written submissions that "the petitioner who was the Chief Legal Officer knew that an extension of her service could be granted only if the Board of Directors decided that there existed exceptional circumstances warranting an extension. So, she and all others aware of this requirement must necessarily know that if an extension is not granted it is because the Bank does not see exceptional circumstances. Her application for an extension of service contained an account of her performance. Therefore, the communication of an inability to extend her services necessarily carries with it the implication that the Board of Directors think that there are no existing exceptional circumstances."

This submission merely states the obvious. But, the matter in issue is 'Why did the Board of Directors think so?' The Corporate Management, in the normal course, having considered the petitioner's application for an extension of service, had recommended to the Board that she be granted such extension. The Board had, in all the instances cited by the petitioner, followed the recommendation of the Corporate Management both for granting as well as for refusing extensions of service. No material has been placed before us to the contrary by the bank. The departure from this usual and accepted practice makes it obligatory for the Board to

show the Court that valid reasons did exist for the refusal to grant the extension that was recommended by the Corporate Management. The failure to do so indicates either that there were no reasons, or no valid reasons for such refusal. The question at that stage is not whether the Board had the power, which indeed it had, but how the Board exercised that power in coming to the conclusion that there were no exceptional circumstances, when the Corporate Management had in no uncertain terms recommended otherwise.

For the Board to take a contrary view, surely there should have been cogent reasons which justified it. Administrative fairness and transparency require that, in those circumstances, a contemporaneous record of the reasons and the material on which such decision is based, be made; and when such a decision is challenged in proceedings of this nature, a full and fair disclosure of all the attendant circumstances be made to Court. In the matter before us, the bank has regrettably failed in its aforesaid duty.

Its feeble attempt to justify the decision makes the position even worse. As if to add insult to injury, the Chairman of the bank in his affidavit dated 10.12.96 states in paragraph 21 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 at the present time.**" Implicit in the words in italics is the veiled suggestion that the efficiency of the Legal Department was not up to the expectations of the Board and its efficiency could not be increased so long as the petitioner remained as Chief Legal Officer. But, not an iota of evidence has been placed before Court in support of this suggestion, which thus remains a hollow statement.

But the petitioner, on the other hand, has by her counter affidavit dated 17.12.96, sought to refute this suggestion effectively. She states that the Board of Directors and the Management have not raised any query about the alleged lack of efficiency of the Legal Department and reiterates that she has had an unblemished record of service and a successful career as the Chief Legal Officer. Quite

unlike the 2nd respondent Chairman, she supports her position with copies of memoranda addressed to the General Manager, marked (P13), (P14) and (P15), which demonstrate the initiative taken by her from about 1995 to enhance the efficiency and streamline the functions of the Legal Department. Those memoranda deal not only with the urgent problems relating to the cadre position of that Department, (which she bemoans had not received due consideration of the Management, despite her requests for high priority), but they also contain valuable suggestions as to how the bank's customer service as well as its recovery procedures could be improved. She has thereby amply demonstrated her concern for safeguarding the bank's interests, while at the same time ensuring that her staff remain contented, so that they would be motivated to give of their best to the bank.

Even when meeting the Board's attempt to discredit her, she has displayed a high degree of professionalism, befitting the office that she held. In fairness to the petitioner, it should be placed on record that the Chairman's insinuations as regards her lack of efficiency are baseless and unwarranted.

For the reasons aforesaid, I have no hesitation in holding that the decision of the Board of Directors not to grant the extension of service sought by the petitioner was arbitrary, capricious, unreasonable and unfair. It was also undoubtedly discriminatory, as the bank has not been evenhanded in the exercise of its discretion in respect of the petitioner. The impugned decision is, therefore, violative of the petitioner's fundamental right to equality before the law and the equal protection of the law, enshrined in Article 12(1) of the Constitution.

Learned President's Counsel for the petitioner did not seriously press the allegation of discrimination on the ground of political opinion. In any event, the material placed by the petitioner is quite insufficient to come to a finding that the Board of Directors of the bank was biased against the petitioner on political grounds. I, therefore, hold that the petitioner has failed to establish the alleged infringement of Article 12(2).

This brings me to the question of relief. The petitioner has been deprived of her legitimate expectation of continuing in service as the Chief Legal Officer of the bank, initially for a period of one year from 27.11.96, on attaining the age of 55 years. She was at the zenith of her career in the Legal Department which she had served loyally and without any blemish for about 25 years. The bank has been unable to adduce any reason for rejecting the recommendation of the Corporate Management in this regard.

Learned counsel for the bank and its Board of Directors gave the following undertaking to Court on 26.11.96, (when this matter came up for an interim order seeking to restrain the respondents from retiring the petitioner from service:-

"The respondents will not make a permanent appointment to the post of Chief Legal Officer until the final determination of this case; also, in the event of the petitioner succeeding in the application, she will be restored to the post for a period of one year from 27.11.96, together with all backwages and other remuneration. Until the final determination of this case, the petitioner will not function in the post of Chief Legal Officer."

Learned President's Counsel for the petitioner wished to add the following:-

"That the foregoing is without prejudice to the rights of the petitioner to make a further application for the extension of service from 27.11.97."

The Court made order accordingly.

As the petitioner has succeeded in her application, I direct the 1st respondent to restore her to the post of Chief Legal Officer forthwith, for a period of one year from 27.11.96, together with all backwages and other remuneration. This would be without prejudice to her right to make an application for a further extension of service from 27.11.97.

There is no dispute between the parties that the petitioner's all inclusive salary is Rs. 29,577.48 p.m. But, they seem to be at variance as regards her entitlement to the Entertainment Allowance of Rs. 800.00, Managerial Allowance of Rs. 1745.12 and Fuel Allowance of Rs. 10,000.00. As, in terms of the aforementioned undertaking, the petitioner has to be **restored** to the post of Chief Legal Officer with effect from 27.11.96 (for a period of one year) together with 'all **backwages and other remuneration**', she is **deemed to have held** that post during the relevant period. Her **inability to function in the post** was due to the bank deciding that she should not function as Chief Legal Officer until the final determination of this case. In those circumstances, I am of the view that the term 'other remuneration', as used in the terms of settlement, encompasses all allowances payable to the holder of such post, irrespective of whether she functioned in the post or not. I, therefore, hold that the petitioner is entitled to the Entertainment Allowance, Managerial Allowance and Fuel Allowance as well, from 27.11.96 for a period of one year and direct the 1st respondent to pay her all such arrears of salary and allowances forthwith.

Her restoration to the post with backwages and other remuneration does not in any way disentitle her to be adequately compensated for the infringement of her fundamental right under Article 12(1). Having regard to the above order for restoration to the post, with payment of backwages and other allowances, I direct the 1st respondent to pay the petitioner a sum of Rs. 100,000/- as compensation.

The petitioner will also be entitled to costs in a sum of Rs. 25,000/- payable by the 1st respondent.

**DHEERARATNE, J.** – I agree.

**ANANDACOOMARASWAMY, J.** – I agree.

*Relief granted.*