it was rightly observed that the revisional jurisdiction of the High Court is in its real purpose not a mere power, but also a duty and this duty cannot be effectively discharged unless the High Court sees to it that the subordinate criminal Courts conduct their proceedings strictly in accordance with the Code of Criminal Procedure.

(8) I would, therefore, hold that the impugned order in the present revision cannot be equated with an order of acquittal on merits and is in fact an illegal order of discharge and the High Court is not debarred under section 439 (5), Criminal Procedure Code, from entertaining and interfering by way of revision in the present case. I am further of the view that in any case the wide powers of the revisional jurisdiction are not fettered and the Court can act *suo motu* to set aside a clearly perverse order like the present one.

(9) This revision is, therefore, allowed and the impugned order is set aside and the case is remanded back to the Magistrate for trial in conformity with the relevant provisions of the Criminal Procedure Code from the stage of the dismissal of the complaint. The parties are directed to appear before the trial Court on 27th January, 1969.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula and R. S. Sarkaria, JJ.

BEANT SINGH BATH,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 2914 of 1968

January 15, 1969

Punjab Reorganisation Act (XXXI of 1966)—Sections 82(2) and 82(4)—Exercise of powers under—Central Government—Whether required to act in a judicial manner—Such powers—Whether purely administrative—Allocation of Government employees to different successor States—Personal hearing to the employees concerned before decision of their final allocation—Whether necessary—Section 82(1), (2) and (4)—Whether ultra vires *Article 14, Constitution of India—Section 82(4)—Expression "services"—Whether includes service in the making—Punjab Forest Subordinate Service (Executive Section) Rules (1944)—Rules 2(j), 11 and 15—Persons selected for training and still under training on the appointed day of reorganisation—Such trainees— Whether "serving in connection with the affairs of existing State of Punjab"—Central Government—Whether duty bound to integrate them in one of the successor States.*

Held, that in matters relating to integration or allocation of services as a result of reorganisation of States, the Central Government can be the only executive authority who can be vested with the power to decide all questions arising in this connection as there can, indeed, be conflict of interests between the successor States in the determination of such issues. The power to allocate services under section 82 of the Punjab Reorganisation Act, 1966, is neither a supervisory nor even a revisional function. The Act has vested plenary powers of an original nature in the Central Government, so that the successor States can be effectively and properly run with their respective well-balanced cadres carved out of the services of the erstwhile united State of Punjab. The Central Government is, in the nature of things, not ordinarly a judicial or a quasi-judicial tribunal, but is principally an executive authority. The Government employees have no statutory right to refuse to serve any successor State in case of reorganisation of States if the parliamentary enactment providing for the reorganisation authorises such allocation. The effect of the decision of the Central Government in the matter of final allocation is, more or less, akin to the permanent transfer of a Government servant from one part of the territory (with the exception of cases of allocation to the Union Territory of Himachal Pradesh) to any place in another part of the territory to which the employee could have been transferred without any objection if the united State of Punjab had not been reorganised by the Act. Even in the matter of allocation to Himachal Pradesh, no legal objection can be raised by the employees as article 309 of the Constitution and any rules framed thereunder are deemed to have been amended to the extent of allowing such permanent transfers by operation of article 4 of the Constitution, as the matter of such permanent transfer or allotment or allocation, as it has been called, is necessarily incidental to and consequential upon the reorganisation of the States. The phraseology of the Act does not cast any duty on the Central Government to decide the question of allocation in a judicial manner. The Act does not lay down any objective criterion for giving a decision under sub-sections (2) and (4) of section 82. The manner of disposal of representations provided by the Act does not justify an inference of quasi-judicial functions of the Central Government being involved. There is no indicia even in any contemporaneous legislation which can lead the Court to infer that the Act enjoins upon the Central Government a duty to act judicially in the matter of allotting employees of the erstwhile united State of Punjab to any of the successor States. Hence in exercise of its functions under section 82 of the Act, the Central Government is not called upon or required to act judicially and, therefore, its powers under that provision are neither judicial nor quasi-judicial, but are purely administrative. (Paras 18, 20, & 21)

Held, that when a tribunal or an authority is not required to perform a function in a judicial or quasi-judicial manner, there is normally no right of hearing by such an authority. At the same time, there is nothing to prohibit the making of a provision for hearing or for grant of an opportunity to any person, who is likely to be affected in any manner, even by the decision of an administrative or executive authority. However on careful reading of the relevant provisions of the Act, keeping in view its scheme and the scope of its preamble as well as the objects sought to be achieved

by the exercise of powers vested in the Central Government under section 82 of that Act, the said provision does not appear to cast any duty on the Central Government to afford a personal hearing to an employee before the question of his final allocation to any of the successor States is decided.

(Paras 22 & 25)

Held, that guiding principles for giving a decision on any disputed matter must not necessarily be laid down in so many words in a statute, but may be gathered from the preamble and the scheme of the relevant Act, from other contemporaneous legislation, from the situation in which the law in question was enacted and from facts disclosed in the affidavits sworn in reply to the relevant writ petitions. In the Punjab Reorganisation Act, 1966, the parliament has given an indication of the main determining criterion to be adopted for allocation of services inasmuch as the fair and equitable treatment is required to be meted out to the services. It would be in the nature of things impossible to lay down any rigid rules or guiding principles for allotment of employees of the erstwhile State of Punjab to the four successor States, as the main and supervening consideration which had to weigh with the Central Government in deciding this matter ought to have and must have been the necessity to provide a balanced cadre for each of the relevant services in the four successor States irrespective of merely personal considerations of the employees concerned. The preamble of the Act also tends to show that the object of distribution of services was to reorganise the States. Reorganisation of States includes reorganisation of the services of the new States. Such reorganisation necessarily envisages the machinery for providing each of the successor States with balanced cadres in its services. This itself is a sufficient guiding principle besides the principle contained in clause (b) of sub-section (4) of section 82, of the Act. In view of the preamble and the provisions of the Act, the objects of the statute and other matters referred to above, section 82 of the Act does not violate the guarantee of equal protection of laws enshrined in article 14 of the Constitution of India.

(Paras 32 & 33)

Held, that the expression "service" used in section 82(4) of the Act includes 'service in the making', i.e., persons like those (i) who might have taken competitive provincial services examinations and in whose cases merit lists might have been prepared by the Public Service Commission of the existing State of Punjab but who might not have been appointed or posted to any place or to any post before November 1, 1966 or (ii) who might have been otherwise selected for appointment but not actually appointed.

(Para 40)

Held, that a critical survey of the Punjab Forest Subordinate Service (Executive Section) Rules, 1944, clearly shows that as soon as a person is selected for training in the college and he accepts the terms of his appointment as a trainee and executes the prescribed agreements and bonds, he starts serving in connection with the affairs of the State and it cannot be said that it is the State which is serving him at its cost to give him training, so that he can do anything he likes after the completion of his training. A trainee may not become the member of the service before his actual

appointment, he is nevertheless serving in connection with the affairs of the existing State of Punjab while he is undergoing training at the cost of the State and is, in addition, in receipt of stipend from the State coffers. The relevant rules imply that it is neither open to the State to deny a post to a trainee if he successfully completes the course of training and fulfils all other requisite conditions nor is it open to the trainee to refuse to take formal appointment in the service on such completion of the training. It is the duty of the Central Government while undertaking division of services envisaged by sub-section (4) of section 82 of the Act to allot and integrate even the trainees to one or other of the successor States.

(Para 42)

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned order transferring the services of the petitioner from Punjab State to Himachal Pradesh and directing the respondents to retain the services of the petitioner in Punjab State.

C. L. LAKHANPAL AND I. S. VIMAL, ADVOCATES, for the Petitioner.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB, WITH G. R. MAJITHIA, DEPUTY ADVOCATE-GENERAL, R. C. SETIA, AND R. K. CHHIBER, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—This judgment will dispose of three writ petitions in all of which the following three common questions of law are involved :—

(1) Whether the Central Government is to act in a quasi-judicial manner or in an administrative manner in exercise of its powers under section 82(2) and (4) of the Punjab Reorganisation Act, hereinafter called the 1966 Act, in the matter of allocation of services to the successor States of the erstwhile united State of Punjab;

(2) If it is held that in allocating Government employees to different successor States under the 1966 Act the Central Government is not acting in a quasi-judicial capacity, is it still necessary for the Central Government to gave personal hearing to the employees concerned before the question of their final allocation is decided; and

(3) Whether section 82(1), (2) and (4) of the 1966 Act is *ultra vires* article 14 of the Constitution ?

To the Province of East Punjab broken off from the pre-partition Province of Punjab as a result of the demarcation of the dominions of India and Pakistan consequent upon the coming into force of the Indian Independence Act was added the Part 'B' State of Patiala and East Punjab States Union by the States Reorganisation Act, 1956, hereinafter called the 1956 Act, on and with effect from November 1, 1956. The united State of Punjab so formed continued to exist till October 31, 1966. November 1, 1966, was the appointed day under the 1966 Act, on and with effect from which date the united State of Punjab was divided into the present State of Punjab, the present State of Haryana, the Union Territory of Chandigarh and the transferred territory which on and with effect from the appointed day formed part of the Union Territory of Himachal Pradesh. Provisions for the allocation and rights and liabilities of the Government employees of the erstwhile State of Punjab were made in Part IX of the 1966 Act. Section 81, with which Part IX starts, relates to All-India Services with which we are not concerned in these cases. Section 82, around which the web of arguments has been woven in the course of submissions before us, is couched in the following language—

"82(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

(4) The Central Government may, by order, establish one or more advisory committees for the purpose of assisting it in regard to—

(a) the division and integration of the services among the successor States; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(5) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of section 81 apply.

(6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of Union or any State;

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

Section 83 provides for the continuance of officers in the same posts which they were holding immediately before the appointed day. Section 84 empowers the Central Government to give directions to the State Governments of Punjab and Haryana and to the Administrators of the Union Territories of Himachal Pradesh and Chandigarh for the purpose of giving effect to the provisions of sections 81 to 83. Section 85, the last provision in Part IX, relates to the State Public Service Commissions and does not concern us at the moment.

(2) In order to give effect to the provisions of Part IX of the 1966 Act, departmental committees were constituted for proposing the cadre strength of the various services, other than All-India Services. Work of making suggestions for the allocation of existing

personnel was also undertaken in the first instance by those committees. Broad principles for allocation were laid down in advance. The objective of making composite and balanced cadres was given the first importance. The proposals made by the departmental committees in regard to allocation were examined by the committees of officers (headed by Shri V. Shanker, I.C.S.) appointed by the Central Government. (This procedure and broad principles for allocation were laid down in letter No. 2615-S-RN-66, dated August 9, 1966, from the Chief Secretary, Punjab Government, to all heads of departments).

(3) "Appointed day" under the 1966 Act, as already stated, was the 1st day of November, 1966. Section 2(f) defines the "existing State of Punjab" as "the State of Punjab as existing immediately before the appointed day". "State of Punjab" is defined in section 2(1) to mean the State with the same name, comprising the territories referred to sub-section (1) of section 6, i.e., the new State of Punjab which came into existence as a result of the 1966 reorganisation. Section 2(m) defines "successor State" to mean the State of Punjab or of Haryana and to include also the Union in relation to the Union Territory of Chandigarh and the transferred territory". Section 2(n) defines "transferred territory" as the territory which on the appointed day stood transferred from the existing State of Punjab to the Union Territory of Himachal Pradesh.

(4) A brief survey of the relevant facts of each of the three cases which are being disposed by this common judgment, may be made at this stage before dealing with the legal propositions on which arguments have been addressed by both sides.

(5) Mukand Lal, the petitioner in Civil Writ No. 3606 of 1968, was a J.B.T. teacher in a Government Higher Secondary School in the Punjab Education Department and was serving immediately before the appointed day at a station which falls in the reorganised State of Punjab, and with effect from the appointed day, the petitioner was provisionally allocated to the State of Punjab. The petitioner, however, submitted a written representation to the Director, Public Instruction, Punjab, through the District Education Officer on or about March 10, 1967, for being allocated to the State of Haryana. His representation was submitted to the Central Government through the committee of Chief Secretaries. In the meantime, on or about May 30, 1967, the petitioner submitted an

application withdrawing his request for allocation to the State of Haryana. According to the facts stated in paragraph 7 of the written statement of respondent No. 2 (the State of Punjab), this "change was sought on account of the Kothari Commission's report". In the affidavit of the Director of Public Instruction, Haryana (respondent No. 5) it has been stated that no such request withdrawing the earlier prayer for allocation to the State of Haryana was received in the Education Department of that State. Be that as it may, the Central Government granted the original prayer of the petitioner and consequent upon the acceptance of his representation for change of allocation from the State of Punjab to the State of Haryana, finally allocated the petitioner to the latter State. In pursuance of the orders of the Central Government, an order was issued by the Haryana Government on November 22, 1968 (Annexure 'A' to the writ petition) transferring the petitioner to Ambala. Copy of the order was endorsed to the Director, Public Instruction, Punjab, and other relevant officials, to direct the officials concerned to report for duty at the new place of posting in Haryana State. It would be appropriate to mention at this stage that representation of Santosh Kumari, wife of the petitioner was also accepted by the Central Government and she was also allocated to the Haryana State. It is stated by the petitioner that she had also subsequently withdrawn her representation but, it is admitted, she has not filed any separate writ petition impugning the order of her final allocation. After the receipt of their order of final allocation, Mukand Lal, petitioner, as well as eight other teachers submitted this joint writ petition. On an objection having been taken to a joint petition having been filed by nine persons having different cases, all the original petitioners excluding Mukand Lal Jethi, withdrew from the petition. Civil Writ No. 3606 of 1968 was, therefore, admitted by the Motion Bench (Pandit and Sodhi, JJ.) on November 29, 1968, after Mr. M. S. Pannu, the learned counsel appearing at that time for all the petitioners, had stated that this writ petition may be treated as on behalf of petitioner No. 1 only. Whereas it is stated in the writ petition that the orders of the final allocation of the petitioner are bad, because no guiding principles whatever have either been provided in the 1966 Act or in any rules framed thereunder and even some of the broad principles laid down by the Government have not been followed in the matter of the allocation of the petitioner, it has been averred in the written statement of the Punjab State that the petitioner was allocated to Haryana at his own request and his subsequent request for withdrawal of his application for allocation to the State of Haryana had been considered

and rejected and that the allocation has to be made by the Central Government keeping in view various factors and does not depend upon the discretion of the employee. The claim of the petitioner about his being entitled to a personal hearing before final allocation has also been denied and it has been added that the subsequent representation filed by the petitioner was duly considered and rejected.

(6) Mrs. Amarjit Baidwan, the writ petitioner in Civil Writ No. 3575 of 1968, was a lecturer in geography in the Government College, Faridkot, district Bhatinda, prior to the reorganisation of Punjab. Her husband, Major A. S. Baidwan, is serving the Indian army and is posted in a field area. The parents of the husband of the petitioner are living in village Kumbra, tehsil Kharar, district Ropar, in the new State of Punjab. The entire immovable property of the petitioner's husband is also in that village. The parents of the petitioner are also permanently settled in the new State of Punjab. Throughout her service, the petitioner had been posted in the territories which now fall in the reorganised Punjab. It is not denied by the Director, Public Instruction, that the petitioner has no relation or property in the territories comprised in the State of Haryana. Necessary information as to domicile, language known (Hindi or Punjabi), experience and places of previous posting was got from the petitioner for purposes of her allocation and she filled in the prescribed *pro forma,* wherein it is stated that she desired to be allocated to the State of Punjab. She was, however, provisionally allocated to the State of Haryana by the order of the Central Government, communicated to the petitioner in the letter of the Director of Public Instruction, Haryana, dated December 2, 1966 (Annexure 'A' to her writ petition) on and with effect from the 1st of November, 1966. It was, however, stated that she could continue in the place of posting held by her till further orders. That is how the petitioner continued to serve in the territory of the new State of Punjab despite her provisional allocation to the State of Haryana. Immediately on receipt of the order of provisional allocation, the petitioner represented in writing on December 21, 1966 (copy of representation is Annexure 'B' to her writ petition), wherein she prayed that her provisional allocation may be cancelled and instead she may be allocated to the State of Punjab on various grounds mentioned by her in her application. Her husband also submitted a representation (copy Annexure 'C') to the Chief Secretary, Haryana Government, Chandigarh (with a copy to the Chief

Secretary, Punjab Government), wherein he requested that his wife, the writ petitioner, may be allocated to the State of Punjab. The application of the petitioner's husband was forwarded to the Chief Secretary, Punjab Government, as Annexure to his Commanding Officer's letter, dated April 5, 1967 (Annexure 'D'), strongly recommending the application of Major Baidwan and requesting that in view of the facts mentioned in his application, his wife (the writ petitioner) may be finally allocated to the State of Punjab. The Chief Secretary, Punjab Government, in his letter, dated September 13, 1968, informed the petitioner that her request for change of allocation from Haryana to Punjab had been considered and that the Government were unable to accede to her request "for want of a vacancy in the Punjab cadre". The stage at which the representation of the petitioner and of her husband and the recommendation of her husband's Commanding Officer were placed before the Central Government is not known from the record. Nor has it been categorically stated that all the representations of the petitioner were actually considered by the Central Government before giving its final decision. Since the Chief Secretary, Punjab Government, had written to her that her representation had been rejected, the petitioner immediately replied back to the Governor of Punjab on September 21, 1968. She pointed out that the Chief Secretaries had rejected her request "in spite of the fact that she was willing to go on leave without pay for any duration till there was a vacancy in the Punjab to accommodate her". She then gave details of the various grounds on which she wanted to stay in the Punjab. It is not definitely known as to what happened to the said representation. By order, dated November 22, 1968, the Haryana Education Department notified that the petitioner (along with ten other persons) stood transferred from the State of Punjab to the State of Haryana on account of their final allocation to the latter State. It was in these circumstances that Mrs. Amarjit Baidwan filed this writ petition on November 27, 1968, praying for the record of the case being summoned and for the order of the Chief Secretary, dated September 13, 1968, rejecting her representation and for the order of the Haryana State, dated November 22, 1968, informing her of her final allocation (Annexures 'E' and 'G') as well as the order of her provisional allocation, dated December 2, 1966 (Annexure 'A') being quashed. A further prayer has been made for directing the respondents to allocate the petitioner finally to the State of Punjab. Interim prayer for staying the operation of the final order of transfer (Annexure 'G') was also made in the writ petition. At the time of admitting the petition on November 29, 1968, the motion

Bench stayed the operation of the impugned order (Annexure 'G') *ad interim.*

(7) Respondent No. 1, the Union of India (i.e., the Central Government) has not filed any return to the rule issued in this writ petition. Respondent No. 2, the State of Punjab, has stated in the affidavit of its Education Secretary that after the provisional allocation, the officer concerned was given an opportunity to submit representation against the same and that a committee consisting of the Chief Secretaries of the Punjab, Haryana and Himachal Pradesh was set up to examine the representations received against provisional allocations and to make recommendations to the Government of India. It has been further stated that the function of the committee consisting of the Chief Secretaries of the three successor States was only advisory in character and that the final decision lay with the Central Government. It has been emphasised that the allocation of services under the Act being an administrative matter, the question of providing opportunity of personal hearing to the petitioner did not arise. In paragraph 6 of the return it has been averred that the provisional allocation of the petitioner was made by the Central Government, but in paragraph 8 it has merely been stated that "considering the representation of the applicant on merits, it was found that her request could not be acceded to". It has not been made clear whether this decision was arrived at by the committee of Chief Secretaries itself or was actually arrived at by the Central Government. In paragraph 10 of the return it has been submitted that the Government of India have allocated the petitioner to the State of Haryana and, therefore, the Haryana State Government have issued the posting orders of the petitioner. In paragraph 14, an averment has been made to the effect that it was not necessary for the departmental committee or the committee of Chief Secretaries to give any personal hearing while considering the representations against the provisional allocation of the petitioner. It has, however, been added that her representations were duly considered. Though the above-said reference to the consideration of the representations is obviously to the departmental committee and the committee of Chief Secretaries, it has been stated in paragraph 15 that "it is incorrect that the representations of the petitioner were not correctly considered by the committee constituted by the Central Government and by the Central Government." In paragraph 16(iii), it has been finally stated that the impugned order was passed by the Central Government "after considering the entire facts of the case". In the additional plea the Secretary to the Punjab Government has added that the order of the

Central Government allocating the petitioner to the State of Haryana is an executive order and is, therefore, not justiciable in the writ petition.

(8) In the third case, i.e., in Civil Writ No. 2914 of 1968, the petitioner is one Beant Singh, a Forest Range Officer, posted at Anandpur Sahib in Ropar District in the new State of Punjab. In view of the peculiar facts which have given rise to the filing of his writ petition, it is necessary to notice the facts brought out in the writ petition as well as in the written statements filed by the State Government and the Central Government in a comparatively greater detail.

(9) The petitioner was selected for training as stipendiary Forest Ranger at Dehradun in the training course for the years 1965-67. In letter, dated March 24, 1965 (annexure 'H') the petitioner was informed by the Chief Conservator of Forests, Punjab, that he had been so selected and that he should report for the prescribed training at the Northern Forest Rangers College, Dehradun, on April 2, 1965. In paragraph 2 of the said communication it was added as below—

> "You will be appointed as Forest Ranger (temporary) provided you qualify yourself at the College and receive satisfactory report from the College authorities at Dehradun on the completion of Forest Rangers' course there."

In paragraph 3, it was stated that before joining the College, the petitioner should submit the usual agreement and bond duly completed in all respects and duly attested by a Magistrate. During the training period, the petitioner was in receipt of a stipend of Rs. 100 per month. While he was undergoing training, the reorganisation of the State of Punjab was impending and the petitioner was proposed to be posted to Punjab, whereas one Surjit Singh (not a party to the writ petition) was provisionally allocated for being posted to Himachal Pradesh in the end of October, 1966. On January 27, 1967, the petitioner and Surjit Singh submitted a joint application (copy annexure R-1 attached to the written statement of the State of Punjab, respondent No. 2). The relevant part of the said application reads as follows—

> "Surjeet Singh, due to his family circumstances, which compel him to prefer Punjab service, wants to be transferred from Himachal Pradesh to Punjab.

Beant Singh, on the other hand, agrees and moreover prefers to be transferred from Punjab to Himachal Pradesh.

We shall be highly thankful to you if you kindly take proper steps for our mutual transfer."

The united State of Punjab was reorganised by the 1966 Act before the petitioner concluded his course of training. After he had successfully completed the course, letter, dated March 10, 1967 (annexure 'E' to the writ petition) was issued by the Chief Conservator of Forests, Punjab, to the Principal, Northern Forest Rangers College, Dehradun, asking the latter to direct the Nineth Rangers' Course students of the Northern Forest Rangers College, who had been allocated to the Punjab State on completion of their course to report in the office of the Chief Conservator of Forests, Punjab, Chandigarh, "for obtaining their appointment orders". Copy of the communication was forwarded to Beant Singh, petitioner for information and necessary action. Office Order, dated April 1, 1967 (copy annexure 'F') was then issued by the Chief Conservator of Forests, Punjab, wherein it was stated that the stipendiary Forest Rangers (including Beant Singh petitioner, whose name was shown at serial No. 4), who had successfully completed their 1965—67 course of training "are appointed Forest Rangers in the scale of Rs. 100—10—200/10—300 in temporary capacity on two years probation against the exvisting vacancies with effect from the date noted against each or the date on which the candidate actually joins his division whichever is later." The date on which the petitioner was to join his division was mentioned in the Office Order as "the forenoon of April 5, 1967". It was further stated in that Office Order that the appointment of the petitioner and other persons named in the Order was up to February 29, 1968, which might, however, continue in case the posts against which they had been appointed continued. The Conservator of Forests, Bist Circle, Punjab, then issued the posting order, dated April 4, 1967 (copy annexure 'G') in which it was stated that consequent upon his appointment as a Forest Ranger in the Bist Circle. Beant Singh petitioner was posted to Mattewara Beat in Ludhiana Range. Copy of the said order was endorsed to the Range Officer, Ludhiana, directing him to hand over the charge of the Mattewara Beat to Beant Singh petitioner "for one month to complete his training period". Copy of the posting order along with a copy of the above-said endorsement was docketed to Beant Singh, petitioner, for information and necessary action.

(10) The joint representation of the petitioner and Surjit Singh came up before the committee of Chief Secretaries in July, 1967, and the committee decided to accede to their joint request and recommended their case to the Central Government for the allocation of the petitioner to Himachal Pradesh and for the allocation of Surjit Singh being made to Punjab.

(11) It was sometime in early June, 1968, that the petitioner submitted his application, dated nil (copy Annexure 'B' to the writ petition) to the Secretary to the Government of India in the Ministry of Home Affairs, pointing out that due to certain reasons mentioned in the application, he found it extremely difficult to join the service in Himachal Pradesh to which he had been allocated by order, dated October 30, 1966. He went to the length of stating that if in spite of the facts mentioned therein he was not allocated to the State of Punjab, he might be forced to resign his job. Copies of the application were sent to the Chief Conservator of Forests, Punjab, the Chief Secretary to the Punjab Government, the Chief Secretary to the Himachal Pradesh Government and the Chief Conservator of Forests, Himachal Pradesh. According to the return of the respondent, the above-said representation of the petitioner was duly received on June 7, 1968, and had been forwarded to the Central Government. The petitioner also claims to have sent some other representations in or about June/July, 1968, to the Forest Minister, Punjab State (Annexure 'A') and to the Chief Minister, Punjab (Annexure 'C'). The contents of all the three representations were practically the same. The Central Government acceded to the request contained in the joint representation of Surjit Singh and the petitioner and finally allocated the petitioner to Himachal Pradesh by their order, dated August 5, 1968. On receipt of the orders of the Central Government, the Conservator of Forests, Sutlej Circle, Punjab, informed the petitioner of the Central Government's decision, dated August 5, 1968, and further stated that the petitioner had accordingly been ordered to be relieved from the State of Punjab as per orders issued by the Chief Conservator of Forests on August 29, 1968 (copy of that communication is Annexure 'D' to the writ petition). These were the circumstances in which the petitioner came to this Court on September 11, 1968, under articles 226 and 227 of the Constitution, for issuance of an appropriate writ, order or direction quashing the impugned order (Annexure 'D'), dated September 5, 1968, whereunder the services of the petitioner had been transferred from the State of Punjab to the Union Territory

of Himachal Pradesh. An additional prayer was also made in the petition to direct the respondents (the Union of India, the State of Punjab and the State of Himachal) to retain the services of the petitioner in the State of Punjab. The petitioner did not, at the time of originally filing the writ petition, produce his appointment letter, etc., and had merely prayed for quashing the orders of his final allocation on the ground that he had never been given an opportunity to show-cause why he should not be allocated to the State of Himachal and on the additional ground that the petitioner had not joined service in the united State of Punjab before its re-organisation. Of course, he had, in addition, impugned the vires of section 82 of the 1966 Act. When this writ petition came up before Capoor, J., and myself on September 12, 1968, we directed him to produce his original letter of appointment. Thereupon, he produced the communications, dated March 10, 1967, April 1, 1967, and April 4, 1967 (Annexure 'E', 'F' and 'G', respectively) on persuing which the petition was admitted and notice thereof was directed to issue to the respondents on September 16, 1968. At the same time, the motion Bench directed *ad interim* stay of the impugned order. This is the only case in which the Central Government has filed a return.

(12) Mr. B. Shukla, Deputy Secretary to the Government of India in the Ministry of Home Affairs, has sworn in his affidavit, dated December 17, 1968, that it was the Central Government which passed the orders of the provisional allocation of the officers of the erstwhile State of Punjab among the successor States and that for this purpose the Central Government obtained all relevant information from the erstwhile State of Punjab and after considering the recommendations made by a committee of senior officers (Shankar Committee) the Central Government provisionally allocated the petitioner to the Forest Department of the State of Punjab. It is then stated that, broadly speaking, the Shankar Committee, in formulating its proposals, followed the following principles—

"(a) Need for a balanced cadre in accordance with age and seniority group in each successor unit.

(b) The administrative needs of the various Departments and offices in Punjab, Haryana and Chandigarh, etc.

(c) Qualifications of officers for specific posts requiring special qualifications.

(d) Other relevant factors, viz., the place or places where the officers have their family houses or own immovable property, languages known, place or places where they have worked, were also given due regard."

Emphasis has then been laid down on the fact that the above-quoted principles did not fetter the rights of the Central Government under sub-section (1) of section 82 of the 1966 Act to make provisional allocations. Reference has been made to the procedure whereunder the officers concerned were given an opportunity after the issue of the orders of the provisional allocation to submit representations seeking change in their allocations. It has been averred in this connection as below—

"3. After the issue of the provisional allocation order, the officers concerned were given an opportunity to submit representations seeking change in the allocations. A committee consisting of the Chief Secretaries of Punjab, Haryana and Himachal Pradesh was set up under the direction of this respondent to examine the representations received against the orders of provisional allocations and to make recommendations to this respondent. This respondent further directed that, while the object of review was to remove genuine hardship, it was necessary to adhere to the criteria followed by the Shankar Committee, and that domicile, as such, should not be given undue weightage. In fact, cases where reallocation might be justified would be those where the principle of balanced cadre might have been substantially ignored owing to inadequate or incorrect data having been placed before the Shankar Committee, or where, the needs of the departments of successor States were not correctly assessed."

In paragraph 4 of the return, the Central Government has stated about the facts of this case that the petitioner himself had requested for change of his allocation from Punjab to Himachal Pradesh and that, therefore, he cannot claim it as of right to withdraw his own representation on any ground. It has been added that the petitioner cannot disown his representation on the plea that as a student he was ignorant of the facts. On receipt of the recommendation of the Chief Secretaries' committee on the representations for change of allocation, the Central Government, it is stated, passed orders finally

allocating the petitioner to the Himachal Pradesh and it was this order which was conveyed to the State Government. The Central Government has also taken up the plea that the allocation of the services under the 1966 Act is an administrative matter and the orders of allocation passed by the Central Government are not justiciable. In paragraph 5 of the written statement, the Central Government has added that the petitioner was given adequate opportunity to put forward his case and the same was carefully considered and orders passed. This, it is stated, is manifest from the fact that the allocation of the petitioner to Himachal Pradesh was done after considering his representation for such a change.

(13) The State of Punjab has filed the affidavit of its Deputy Secretary in the Development Department as a return to the rule issued to that State. In paragraph 5 of the written statement, the Deputy Secretary has stated that the petitioner, who was originally allocated to the State of Punjab, applied himself for the change of his allocation from Punjab to Himachal Pradesh and that the petitioner did not make any representation to the respondents withdrawing his application for change of allocation till the decision by the committee of Chief Secretaries in July, 1967, to accede to the request of the petitioner for change of his allocation from Punjab to Himachal Pradesh. The State of Punjab has emphasised that the change of allocation having been made at the petitioner's own request, the question of giving him any opportunity to show cause did not arise. Further relevant facts disclosed in the return of the State of Punjab are that the allocation of the trainees was also made like the employees of the erstwhile State of Punjab between Punjab, Haryana and Himachal Pradesh; that the petitioner had executed a bond on March 23, 1965, in favour of the State of Punjab to serve in that State for five years and that consequent upon the reorganisation of the State the petitioner had to be allocated to either of the successor States. It is then stated that it was in accordance with his allocation to the State of Punjab that the petitioner was posted to Anandpur Sahib after completing his training but that later on at the petitioner's own request for change of his allocation from Punjab to Himachal Pradesh, the Central Government allowed the change. On the legal aspect of the matter it has been added that the petitioner having been selected by the Punjab Government and the petitioner having executed the necessary bond to serve the State of Punjab for five years after the completion of his training, the State of Punjab had full jurisdiction/

power in the service matters of the petitioner. I have already referred to the other facts disclosed in the return of the State of Punjab about the petitioner having been selected and deputed for training in April, 1965. Regarding the petitioner's allegation about his having opted for Himachal Pradesh merely as a student, the State of Punjab has averred that he was about twenty seven years of age at the relevant time and could not be expected to sign the document on someone else's persuasion. It has been emphatically stated that the subsequent request of the petitioner for re-change of his allocation was received only in June, 1968, i.e., about 17 months after his first request for change of allocation and a long after the committee of Chief Secretaries had finalised its recommendations in July, 1967.

(14) The Himachal Pradesh Administration has not filed any separate return in this case.

(15) The main arguments on the legal questions were addressed by Mr. C. L. Lakhanpal, the learned counsel for Beant Singh, Whatever little was added to those arguments on the main points has also been noticed along with the submission of Mr. Lakhanpal. The additional points made out in the other cases are being dealt with separately. At the conclusion of the hearing of the petitions, we passed short orders allowing Civil Writ No. 3575 of 1968 on its own peculiar facts and dismissing Civil Writ No. 3606 of 1968 on the ground that section 82 of the 1966 Act was not *ultra vires* article 14 of the Constitution and the petitioner had no right of hearing before his final allocation. We, however, reserved our judgment in Beant Singh's case on account of its own peculiar facts. We, therefore, now proceed to give this detailed judgment containing reasons for the short orders already pronounced by us and giving our decision in Beant Singh's case.

(16) Mr. Lakhanpal arranged his arguments under the following headings—

(1) In exercise of its powers under sub-section (2) read with sub-section (4) of section 82 of the 1966 Act, the Central Government is required to act in a judicial manner. The Central Government, therefore, exercises quasi-judicial functions while considering and deciding representations under sub-section (4) of section 82 and making final allocation of existing services under sub-section (2) of that

section. Since the function of the Central Government in making final allocation of services is quasi-judicial, the Central Government is bound to afford an adequate opportunity of hearing to the employees concerned before they are finally allocated to any of the successor States;

(2) even if it is held that in making final allocations under section 82(2) and (4) of the 1966 Act, the Central Government does not act in a quasi-judicial capacity but merely performs a purely administrative act, it is still necessary for the Central Government to give a hearing to the employees concerned before deciding the question of their final allocation, as the final allocation to a successor State affects the civil rights of the existing employees;

(3) the entire proceedings of the provisional as well as final allocation of the employees of the erstwhile united State of Punjab including the orders of provisional and final allocation of the writ petitioners are wholly void and ineffective as section 82 of the 1966 Act under which the allocations purport to have been made, is *ultra vires* article 14 of the Constitution inasmuch as neither the section itself nor in any other provision in the 1966 Act nor, indeed, in any rules framed under the Act have any guiding principles or criteria been laid down for deciding as to which of the employees should be allocated to which of the successor States. The expression "fair and equitable treatment" used in section 82(4) of the 1966 Act is too vague. The use of this expression has left the fate of the employees in the matter of their allocation to any of the successor States to the vagaries and unguided and uncontrolled arbitrary whim of the executive;

(4) Beant Singh, petitioner, who was undergoing training and had executed a bond for serving the State of Punjab for five years after the successful termination of his training as a Forest Ranger, cannot be said to have been serving in the State of Punjab immediately before the appointed day, i.e., immediately before the November 1, 1966, as he was for the first time appointed in the service of the Punjab Government as a Forest Ranger in April, 1967, as is evidenced by the appointing order, the posting order and the Office Order, dated March 10, 1967 (Annexure 'E'), April 1, 1967 (Annexure 'F') and April 4, 1967 (Annexure 'G'), respectively; and

(5) Beant Singh, petitioner, having withdrawn his request for change of allocation from Punjab to Himachal Pradesh before the final decision of the Central Government on his earlier request (Annexure R-1), it was not open to the Central Government to consider or accept the representation (Annexure R-1), and to allocate the petitioner to the Union Territory of Himachal Pradesh.

I will first take up the question of the nature of proceedings under section 82. I have already quoted the said section in an earlier part of this judgment. Since the relevant part of section 82 of the 1966 Act is substantially analogous to the corresponding portions of section 115 of the 1956 Act, it appears to be necessary to quote the latter provision also—

"115. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Cutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any ther successor State.

(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to—

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(6) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of section 114 apply.

(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

From a critical comparison of the above-said provisions of the two reorganisation Acts, it would be seen that the following provisions of section 115 of the 1956 Act correspond, for all practical purposes,

to the provisions of section 82 of the 1966 Act noted against each of them—

Serial No.	1956 Act	Substance of the provision	Act 1966
1.	Section 115 (2)	Provisional allocation of services	Section 81(1)
2.	Section 115 (3)	Final allocation	Section 82 (2)
3.	Section 115 (5)	Establishment of Advisory Committees, consideration of representations of employees and criteria of fair and equitable treatment for division or integration of services	Section 82 (4)
4.	Section 115 (7)	The operation of Chapter 1 of Part XIV of the constitution to the integrated or divided services after the appointed day saved	Section 82 (4)
5.	Proviso to section 115 (7)	Existing conditions of service of the employees not to be affected by the successor State except with the previous approval of the Central Government	Proviso to section 82 (6)

Counsel were, more or less, agreed that so far as provisional allocation of services as from the appointed day is concerned, it would be too much to expect any one to hear all the employees concerned before tentatively allocating them to one of the successor States. Serious objection has not been taken to the allocation under sub-section (1) of section 82, because, after all; the said allocation is purely provisional and subject to change by the Central Government on a consideration of the representation of the official concerned. It is the final determination of the successor State to which every person referred to in sub-section (1) has to be allocated under sub-section (2) read with sub-section (4) of section 82, that has to be made, according to the learned counsel for the petitioners, in a quasi-judicial manner. When the precise question as to the nature of proceedings for final allocation of services under section 115(5) of the 1956 Act came up for consideration before their Lordships of the Supreme Court in *Union of India* v. *G. M. Shankaraiah, etc.* (1),

(1) C.A., 1439 and 1446 of 1967 decided by Supreme Court on 16th October, 1968.

decided by a Division Bench of the Supreme Court, the Court left open, amongst others, the question whether the function of the Central Government under section 115 of the 1956 Act is quasi-judicial and not administrative and whether, therefore, the said function had to be discharged in conformity with the principles of natural justice or not. A short note of the judgment of the Supreme Court appears at No. 643 in 1968 S.C.N. at page 447. The matter went up to the Supreme Court from the judgment of the Mysore High Court, wherein the learned Judges of that Court hold that the functions of the Central Government under section 115 are quasi-judicial.

(17) Mr. Hira Lal Sibal, the learned Advocate-General for the State of Punjab, and Mr. I. S. Saini, Advocate for the State of Haryana, vehemently argued that the functions of the Central Government under section 82 of the 1966 Act as indeed the functions under section 115 of the 1956 Act are purely administrative. They have contended that inasmuch as there are no two parties to the matter to be decided by the Central Government under those provisions, there is no *lis* in the sense in which that expression is understood in law. There is no obligation to decide the question of allocation on the basis of any available evidence and there is no indication in any part of the relevant statutes showing that the Central Government is required to act judicially in the matter of integration of services under the relevant reorganisation Acts. Though convenience and law are hardly even on speaking terms, reliance has been placed on behalf of the State in these cases on the unimaginable inconvenience which would result from the necessity to dispose of matters of final allocation in a quasi-judicial manner involving the affording of a hearing, including opportunity to give and rebut evidence, to all employees who might represent against their provisional allocation. The guiding principles for distinguishing quasi-judicial functions from the administrative functions have been laid down by the Supreme Court in its basic judgment on that point in *Province of Bombay* v *Khushaldas S. Advani* (2). In *Board of High School and Intermediate Education* v. *Ghanshyam Das Gupta and others* (3), it was observed on this point as below—

> "Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the

(2) 1950 S.C.R., 621=A.I.R. 1950 S.C. 222.
(3) A.I.R. 1962 S.C. 1110.

> order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute were it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively : (*vide* observations of Parker, J., in R. V. Manchester Legal Aid Committee, 1952-2 Q.B. 413."

Observations to practically the same effect were made by the Supreme Court in *Board of Revenue* v. *Sardarni Vidyawati and another* (4). It was stated in that case as under :—

> "Whether an authority, like the Board of Revenue acts judicially is to be gathered from the express provisions of the Act in the first instance. Where, however, the provisions of the Act are silent, the duty to act judicially may be inferred from the provisions of the statute or may be gethered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used and other indicia afforded by the statute....."

The law on this subject was then stated by Subba Rao, J., in *Dwarka Nath* v. *Income-tax Officer, etc.* (5), wherein it was held that an act emanating from an administrative tribunal would not be anytheless a quasi-judicial act if the tests for holding that it is quasi-judicial are satisfied. The learned Judges of the Supreme Court in that case remarked that the English Judges conceived and developed the concept of a quasi-judicial act with a view to keep the administrative tribunals and authorities within bounds.

(4) A.I.R. 1962 S.C. 1217.
(5) A.I.R. 1966 S.C. 81.

(13) Though it is clear that where the express language of a statute requires a function to be performed in a quasi-judicial manner, no difficulty arises in determining the issue about the nature of the proceedings involved in deciding such a question, difficulty usually arises in deciding whether a tribunal or an authority is expected to decide a matter in a quasi-judicial manner where the phraseology of the relevant statute does not expressly so state. No hard and fast or inflexible rule can, in my opinion, be laid down in deciding whether the exercise of jurisdiction in such a situation is necessarily quasi-judicial or administrative. The criteria laid down by their Lordships of the Supreme Court in their various judgments, to which reference has already been made, for deciding the question whether the duty to act judicially is cast on an administrative tribunal or an executive authority or not, can be classified under the following heads—

(1) Nature of the tribunal,

(2) rights of the parties involved in the dispute,

(3) the objective criterion, if any, on the basis of which decision has to be given, and any objective material or decision which has to be followed as a matter of law,

(4) the manner of disposal of the question in issue;

(5) the effect of the decision on the person affected;

(6) the manner of disposal, if any, provided in the relevant statute or the rules framed thereunder or otherwise laid down by the authority empowered to decide;

(7) the phraseology and language of the relevant provisions in the statute in question read with previous decisions of the Supreme Court or of the High Courts, as the case may be, deciding the question of the nature of the proceedings in other cases where similar phraseology or language was used, and

(8) any other indicia provided by the statute for deciding the matter.

Taking up the criteria enumerated, above one by one, it appears that the Central Government, is, in the nature of things, not ordinarily a judicial or a quasi-judicial tribunal, but is principally an executive authority, the employees have no statutory right to refuse to serve any successor State in case of reorganisation of States in

case the parliamentary enactment providing for the reorganisation authorises such allocation, the effect of the decision of the Central Government in the matter of final allocation is, more or less, akin to the permanent transfer of a Government servant, in the case in hand, from one part of the territory (with the exception of cases of allocation to the Union Territory of Himachal Pradesh) to any place in another part of the territory to which the employee could have been transferred without any objection if the united State of Punjab had not been reorganised by the 1966 Act. The phraseology of the Act does not cast any duty on the Central Government to decide the question of allocation in a judicial manner. The Act does not lay down any objective criterion for giving a decision under sub-sections (2) and (4) of section 82. The manner of disposal of representations provided by the Act does not justify an inference of quasi-judicial functions of the Central Government being involved. There is no indicia even in any contemporaneous legislation which can lead the Court to infer that the 1966 Act enjoins upon the Central Government a duty to act judicially in the matter of allotting employees of the erstwhile united State of Punjab to any of the successor States. Mr. Hira Lal Sibal, the learned Advocate-General appearing for the State of Punjab, who also appeared before us on behalf of the Central Government, was right in submitting that integration or allocation of services as a result of reorganisation of States is not a normal feature of the conditions of service of Government Servants and cannot be treated in the same manner as the conditions of service referred to in article 309 of the Constitution. Articles 3 and 4 of the Constitution give an indication as to the scope of legislation for reorganisation of States including provisions for integration, division organisation and reorganisation of services. The reorganisation effected by the 1966 Act is, more or less, covered by clause (a) of article 3 of the Constitution. Subject to the statutory rights conferred by section 82 itself no right of the employees is at all affected by their being allocated to the State of Punjab or Haryana or to the Union Territory of Chandigarh, as the employees of the erstwhile State of Punjab could not raise their little finger on being posted to any of the stations in any of the territories forming part of the above-said three successor States. Even in the matter of allocation to Himachal Pradesh, which may involve the posting of an employee of the existing State of Punjab not only to a place in Kangra District or in Lahaul and Spiti, to which he could be posted even before the place in Himachal Pradesh, which formed part of the original Union reorganisation of Punjab, but even to Mahasu or to some other

Territory of Himachal Pradesh, no legal objection can be raised by the employees as article 309 of the Constitution and any rules framed thereunder are deemed to have been amended to the extent of allowing such permanent transfers by operation of article 4 of the Constitution, as the matter of such permanent transfer or allotment or allocation, as it has been called, is necessarily incidental to and consequential upon the reorganisation of States. The preamble of the 1966 Act states that the Act has been enacted "to provide for the reorganisation of the existing State of Punjab and for matters connected therewith". The 1966 Act does not, therefore, leave out of its ambit anything relating to reorganisation of the existing State of Punjab. The reorganisation of the State must necessarily involve and include the reorganisation of its services, without which no State Government can properly function. Article 162 of the Constitution provides that the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. Entry 41 in List II of the Seventh Schedule to the Constitution relates to "State Public Services", etc. By operation of article 4 of the Constitution, the executive power of the State under articles 162 and 309 of the Constitution relating to allocation of services amongst the reorganised successor States stands transplanted to the Central Government. In the absence of any statute laying down the conditions of service of persons appointed to public services and posts being enacted under the purview of article 309 of the Constitution, the conditions of service of such employees have to be governed and determined by the President of India or the Governor of a State, as the case may be, in exercises of his powers vested in him by the proviso to article 309 of the Constitution. So long as such rules are not framed by the President of India or by the Governor, the conditions of service had to be regulated by the executive orders of the Government concerned. The executive orders of the Government concerned and even the rules framed under the proviso to article 309 are subject to appropriate enactments. The impugned provisions for allocation of services have been made by parliamentary legislation. Division of services consequential on the reorganisation of a State has nothing to do with conditions of service, as they are ordinarily understood

(19) The argument advanced on behalf of the petitioners to the effect that it is their right to serve the very same master in whose service they were appointed and that there can be no change of masters without their consent appears to be fallacious. This argument has been advanced by the petitioners who want to be allocated to the new State of Punab as a matter of right on the short

ground that they had been appointed to the service of that State and cannot be sent away to another State after reorganisation. The argument is misconceived because it is a mere chance that part of the reorganised State has been given the name of Punjab. The law would have been the same if the new State of Punjab had been called Doaba, the land of two rivers, instead of being called Punjab, the land of five rivers, which erstwhile State as really ceased to exist by virtue of the 1966 Act. The label or mere name of the State does not matter. As a result of the reorganisation effected by the 1966 Act, three new States have come into being and a part of the territory of "the existing State of Punjab" has been ceded to the Union Territory of Himachal Pradesh. What has happened as a result of this reorganisation is that even if the analogy of master and servant is invoked four new masters have come into existence in place of the old master which has ceased to exist. If the petitioners insist in serving the original master, who is no more, they have to choose their own course. The 1966 Act, the legislative competence of the Parliament to enact which has not been questioned, has provided for the impugned allocation of services. In the face of that enactment, there is no right in the petitioners to claim that they must serve the Government of the territory which is, by chance, known by the same name as was borne by the erstwhile State before its reorganisation. No legal or statutory right of the petitioners is, therefore, affected by section 82.

(20) In matters relating to integration or allocation of services as a result of reorgansation of States, the Central Government could be the only executive authority who could be vested with the power to decide all questions arising in this connection as there could, indeed, be conflict of interests between the successor States in the determination of such issues. The power to allocate services under section 82 is neither a supervisory nor even a revisional function. The Act has vested plenary power of an original nature in the Central Government, so that the successor States could be effectively. and properly run with their respective well-balanced cadres carved out of the services of the erstwhile united State of Punjab. Though in order to deal with cases inolving hardship, for example, for spouses of a married couple, who are provisionally allotted to different States services, certain criteria appear to have been laid down by the Central Government for its own guidance, it appears to me that any alleged contravention of the principle of fair and equitable treatment referred to in sub-section (4) of section 82 would not give any cause of action to an employee so long as he

has had a real opportunity to represent and his representation is actually considered by the Central Government. Similarly, notwithstanding the fact that advisory committees had been formed by the Central Government under section 82(4) even if no such committees had been appointed or even the Central Government were not to agree with the advice of such committees, the decision of the Central Government could not be impugned on its merits in a Court of law. The only exception to the rule laid down by me is of the case where it is proved that the decision of the Central Government in the matter of allocation of a particular employee has been vitiated by *mala fide* or has been the result of colourable exercise of power vested in the Central Government, as want of *bona fides* strikes at the very root of the exercise of any official function. At the same time, the proposition that any honest decision arrived at by the Central Government under section 82(2) after actual consideration of the representation submitted under sub-section (4) of section 82 of the 1966 Act is not justiciable in a Court of law, appears to me to be beyond question. I have already held that an employee of the erstwhile State of Punjab has no right to claim to be allocated to any one of the particular successor States. I would, however, hold that even if such a right could be spelt out from any of the previous service conditions of the employee concerned, all such rights have been taken away by section 82 of the 1966 Act read with article 4 of the Constitution. The object to be achieved by orders under section 82 of the 1966 Act is the division of existing employees and their integration in one of the successor States. All these functions appear to me to be purely administrative and applying the principles laid down by the Supreme Court, enumerated above, those functions do not appear to involve any quasi-judicial act. For the petitioners to state that they know Punjabi or Hindi and should not, therefore, be posted to Haryana or Punjab, as the case may be, appears to me to be ridiculous in the face of the admitted fact that a Punjabi-knowing employee could be posted to Rohtak, Karnal or Hissar, now forming part of the State of Haryana—a Hindi-speaking State—and a Hindi-speaking employee could be posted to Ludhiana or Amritsar, now forming part of the new State of Punjab, prior to the reorganisation of the existing State of Punjab. The petitioners cannot, therefore, evolve their own code for deciding the question of their allocation.

(21) For the foregoing reasons, I would hold that in exercise of its functions under section 82 of the 1966 Act, the Central Government is not called upon or required to act judicially and,

therefore, its powers under that provision are neither judicial nor quasi-judicial, but are purely administrative. In so holding, I am not only following my own judgment in Single Bench in *K. C. Gupta* v. *Union of India* (6), but I am also fortified with the learned judgment of S. K. Kapur, J. in *Shaligram Anantram Chaturvedi* v. *Union of India* (7). My judgment in *K. C. Gupta's case* (6), as well as the judgment of S. K. Kapur, J., in *Shaligram Anantram Chaturvedi's case* (7), were given on this point in relation to sub-section (5) of section 115 of the 1956 Act. As already observed, however, the said provision in *pari materia* with section 82(4) of the 1966 Act.

(22) This takes me to the second question agitated by Mr. Lakhanpal. When a tribunal or an authority is not required to perform a function in a judicial or quasi-judicial manner, there is normally no right of hearing by such an authority. At the same time, there is nothing to prohibit the making of a provision for hearing or for grant of an opportunity to any person, who is likely to be affected in any manner, even by the decision of an administrative or executive authority. It is settled law that even an administrative authority must afford an opportunity of being heard to a person whose civil or legal rights are likely to be affected by its decision,—vide *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (8).

(23) Mr. V. P. Sarda, learned counsel for Mrs. Baidwan, referred in this connection to the judgment of the Supreme Court in *Bhagat Raja* v. *Union of India* (9). In that case, it was held that while exercising its revisional jurisdiction under rule 55 of the Mineral Concession Rules, 1960, a personal hearing should have been given to the applicants before the dismissal of their applications for revision. Exercise of revisional powers under a statute for determining dispute between two parties is necessarily quasi-judicial. The judgment of the Supreme Court in *Bhagat Raja's case* (9), does not appear to be of much avail to the petitioners. The only other case to which Mr. Sarda referred in this connection was the judgment of the Supreme Court in *Associated Cement Companies* Ltd. *v.* P. N. *Sharma and another* (10). I do

(6) 1967 S.L.R. 843.
(7) A.I.R. 1967 Pb. 98.
(8) A.I.R. 1967, S.C. 1269.
(9) 1968, C.L.J. (Delhi), 62.
(10) A.I.R. 1965, S.C. 1595.

not think that the observations of the Supreme Court in that case can be of any assistance in deciding the question that faces us as the principal point of law which arose in the *Associated Cement Companies Ltd.'s* case was whether the State of Punjab exercising its appellate jurisdiction under sub-rule (6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, is a tribunal within the meaning of article 136(1) of the Constitution.

(24) Mr. Mohinder Singh Pannu, counsel for Mukand Lal petitioner, relied on the following observations of the Supreme Court in *Jagdish Pandey* v. *The Chancellor, University of Bihar* (11), to support the claim for a hearing by the Government before making final allocation—

> "It is then urged that no provision was made in section 4 for hearing of the teacher before passing an order thereunder. Now Section 4 provides that the Chancellor will pass an order on the recommendation of the Commission. It seems to us reasonable to hold that the Commission before making the recommendation would hear the teacher concerned, according to the rules of natural justice. This to our mind is implicit in the section when it provides that the Commission has to make a recommendation to the Chancellor on which the Chancellor will pass necessary orders. If an order is passed under section 4 even though on the recommendation of the Commission but without complying with the principles of natural justice, that order would be bad and liable to be struck down as was done by the Patna High Court in *Ram Kripalu Mishra* v. *University of Bihar* (12)".

In *Jagdish Pandey's case* (1), the Supreme Court was dealing with question of constitutionality of section 4 of the Bihar State Universities (Amendment) Act (13 of 1962), which made all orders of appointment, dismissal, removal, termination of service or reduction in rank of any teacher of a non-Government affiliated college after a certain date subject to such order as the Chancellor of the University may on the recommendation of the University Service Commission, pass with respect thereto. It was in that context that a right of hearing before the passing of an order relating to

(11) A.I.R. 1968, S.C. 353.
(12) A.I.R. 1964, Patna 41.

matters like appointment and dismissal from service, etc., was held to be implied by the statute so as to satisfy the principles of natural justice. Allotment of serving personnel to one of the successor States on the reorganisation of an existing State is not such a matter as one of appointment to or dismissal from service, etc. Mr. Pannu then referred to the judgment of a Division Bench of this Court in *Prithvi Raj Mehra* v. *State of Punjab* (13). There is nothing in common with that case and the cases before us. Prithvi Raj Mehra's petition was directed against an order of reversion and against the Government's refusal to expunge certain adverse remarks without affording a hearing to him. The writ petition was allowed following the judgment of the Supreme Court in *Jagdish Pandey's case* (11). In *Dr. N. Desaiah and others* v. *Gopernment of Andhra Pradesh and others,* (14), it was held that it is not necessary to give any personal hearing by the Central Government while exercising its function under sub-section (5) of section 115 of the 1956 Act.

(25) On a careful reading of the relevant provisions of the Act and keeping in view the scheme of the 1966 Act and the scope of its preamble as well as the objects sought to be achieved by the exercise of powers vested in the Central Government under section 82 of that Act, I am inclined to think that the said provision does not cast any duty on the Central Government to afford a personal hearing to an employee before the question of his final allocation to any of the successor States is decided.

(26) Even if I had held that the grant of a personal hearing or of an adequate opportunity to be heard is envisaged by section 82 of the Act, I would not have allowed any of the petitions before me on that ground as none of the petitioners has alleged that he or she demanded any right of personal hearing and that the same was denied to him or her, as the case may be, by the Central Government. I say so because it has been held in the *State of Assam* v. *The Gauhati Municipal Board* (15), that there had been no violation of principles of natural justice even if it could be assumed that the right of a hearing was conferred by section 298 of the Assam Municipal Act (15 of 1967), as the Gauhati Municipal Board had never demanded, what is called, a personal hearing and

(13) C.W. 2241 of 1967, decided on 11th October, 1968.
(14) 1968, S.L.R. 430 = 1968 L & I.C. 12.
(15) A.I.R. 1967, S.C. 1398.

never intimated to the Government that it would like to produce materials in support of its explanation at some later stage.

(27) I would, therefore, hold that section 82 of the 1966 Act does not envisage any personal hearing being given to the employee concerned and that, in any event, even if it would be assumed to the contrary, no relief can be granted to any of the petitioners before us on the ground of no personal hearing having been allowed to them as they never demanded any such hearing or opportunity.

(28) Counsel for the petitioners then attacked the vires of section 82 on the solitary ground that it infringes article 14 of the Constitution. The argument, as already indicated, is that this provision vests in the Central Government unguided, unfettered arbitrary powers to allocate any employee to any of the successor States without any right of appeal being conferred by the Act on a person aggrieved by the final allocation made by the Central Government. Mr. Lakhanpal submitted that the mere requirement of the allocation being based on a fair and equitable treatment to all the concerned persons is not enough and that if this is the criteria laid down by the statute, it is too vague and still leaves in the Central Government a power to decide matters of allocation on its sweet-will, as the Act does not even indicate what would be equitable and fair treatment to the employees concerned. Mr. Lakhanpal submitted that though the use of the expression "fair and equitable treatment" in clause (b) of sub-section (4) of section 82 of the 1966 Act shows that the express intention of the parliament to safeguard the interests of the employees of the existing State of Punjab, the object sought to be achieved by providing that criterion has not been fulfilled, as the determination of what is fair and equitable treatment has been left to the vagaries of the exeuctive. Counsel for the parties submitted that no rules have been framed under the Act. Counsel for the petitioners emphasised that the Act has not conferred even a right of hearing on the employees concerned. Mr. Lakhanpal relied on the judgments of the Supreme Court in *Messrs Dwarka Prasad Narain* v. *State of Uttar Pradesh* (16), *Shivdev Singh* v. *The State of Punjab* (17), and the *State of Mysore* v. *S. R. Jayaram* (18), and also on the judgments of this Court in *Harke* v. *Giani Ram and others* (19),

(16) A.I.R. 1954, S.C. 224.
(17) A.I.R. 1963 S.C. 365.
(18) 1968 S.L.R. 92.
(19) I.L.R. (1962)2 Pb. 74 = 1962 P.L.R. 213.

and Harbans Singh and others v. *The Pepsu Land Commission and another* (20); and argued that the following observations of the Supreme Court in the case of *Messrs Dwarka Prasad Laxmi Narain* (16), fully apply to the present case—

> "The mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available comomdities cannot but be held to be unreasonable."

The law laid down by the Supreme Court and by this Court in the above-mentioned cases does not appear to apply to the present case. *In Messrs Dwarka Prasad Laxmi Narain's case* (16), it was emphasised by their Lordships of the Supreme Court themselves that a law or order, which confers such arbitrary powers "in the matter of regulating trade or business in normally available commodities," has to be held to be unreasonable. No such consideration arises in the present case. Similarly, the fundamental property rights of landowners were involved in the case of *Shivdev Singh* (17), and rule 31 of the PEPSU Tenancy and Agricultural Lands Rules, 1958, was held to be unconstitutional, as the rule created three classes of farms for which there was no scope in section 32-K of the PEPSU Act. It was held that the creation of class 'B' farms being beyond the provisions of section 32-K must be held *ultra vires* that section and that such creation of class 'B' farms is so integrated with the whole of rule 31 that it would not be possible to excise class 'B' farms only from that rule and leave the rest of the rule unaffected and that, therefore, the whole of rule 31 must fall. In the *Jayram's case* (18), last part of rule 9(2) of the Mysore Recruitment of Gazetted Probationers' Rules, 1959, was struck down as it was found to destroy the objective of equality of opportunity in employment and vested the Government with an arbitrary power to ignore the just claims of candidates declared successful in a competitive examination held by the State Public Service Commission. In *Harke's case* (19), section 8(2)(a) of the Punjab Gram Panchayat Act (4 of 1953), was held to be void and unconstitutional,

(20) I.L.R., (1964)1 Pb. 455=1964 P.L.R. 1.

as the section providing for the setting aside of an election on the ground of failure of justice having occurred was held to be tainted with uncertainty and was found not to contain any principles or rules for guidance for setting aside an election. In *Harbans Singh's case* (20), rule 30 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, was struck down as being too vague to help persons who wished to claim exemption on the ground that they were keeping sheep breeding farm, as no breeds had been specifically mentioned in the rule as standard breeds.

(29) Reference was then made by learned counsel for the petitioners to a Division Bench judgment of this Court in *Mohinder Singh Sawhney* v. *The State of Punjab and others* (21), In that case, the whole of Punjab Cattle Fairs (Regulation) Act (6 of 1968) was struck down as uncertain and ambiguous, as what was a 'cattle fair' had not been defined anywhere in the Act. Shamsher Bahadur, J., who wrote the judgment of the Bench observed in that case that "it seems axiomatic that what is aimed to be hit and forbidden and made into an offence ought not only be defined in precise language but placed, so far as possible, beyond the pale of controversy". It was in that situation that the Bench held that the infirmity of vagueness of section 3(1) and (2) of the Cattle Fair Act went to the root of the matter and, therefore, the legislative enactment in question had to be struck down as a whole.

(30) It will be noticed that in all the cases referred to above, either some quasi-judicial functions were involved or the property rights of citizens were threatened to be infringed, or the rights of carrying on some business were affected. No such thing happens under section 82 of the 1966 Act.

(31) The last case to which Mr. Lakhanpal referred in this connection is the judgment of the constitution Bench of the Supreme Court in *Union of India* v. *P. K. Roy etc.*, (22). In that case, the Supreme Court was dealing with section 115 of the 1956 Act. It was in that context that their Lordships of the Supreme Court observed as follows—

> "Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy

(21) I.L.R. (1969)1 Pb. & H. 1=1968 P.L.R. 935.
(22) 1968 S.L.R. 104.

> the requirement of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

It was in view of the special circumstances of the case of *P. K. Roy etc.,* (22), that the Supreme Court held that they were entitled to an opportunity to make representations before the final gradation list was published. An order was passed by the Supreme Court in favour of *P. K. Roy etc.,* (22), as no such opportunity had been furnished to them before the preparation of the final combined gradation list. No such complaints has been made in the cases of Mukand Lal and Beant Singh, (Civil Writs Nos., 3606 and 2914 of 1968). The complaint of Mrs. Baidwan, in this respect will be dealt with while discussing her individual case.

(32) It has, by now, been authoritatively settled by the Supreme Court that guiding principles for giving a decision on any disputed matter must not necessarily be laid down in so many words in a statute, but may be be gathered from the preamble and the scheme of the relevant Act, from other contemporaneous legislation, from the situation in which the law in question was enacted and from facts disclosed in the affidavits sworn in reply to the relevant writ petitions. Reference may in this connection be made to the judgment of the Supreme Court in *Kathi Raning Rawat* v. *State of Saurashtra,* (23), and to the subsequent judgment of their Lordships of the Supreme Court in *Jyoti Pershad* v. *Administrator for the Union Territory of Delhi etc.,* (24). In *Kathi Raning Rawat's case,* (23), the Supreme Court distinguished its earlier decision in the *State of West Bengal* v. *Anwar Ali Sarkar and another,* (25), and on a consideration of the preamble and scheme of the Act and all the contents of the affidavits of the State concerned, held that an exactly similar provisions as occured in the West Bengal Act was not violative of article 14 of the Constitution in the circumstances of the case. In *Jyoti Pershad's,* (24), *case,* the Supreme Court was dealing with the question of vires of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, which provision authorises

(23) A.I.R. 1952 S.C. 123.
(24) A.I.R. 1961 S.C. 1602.
(25) A.I.R. 1952 S.C. 75.

the competent authority under that Act to allow or to refuse to allow eviction of a tenant in execution of an order for ejectment passed by a competent Court in Delhi. Section 19 does not admittedly lay down any guiding principles or criteria. Vires of section 19 of the above-said Act were assailed on the ground that it was obnoxious to the equal protection of laws guaranteed by article 14 of the Constitution. It was held that though section 19 does not in terms lay down any rules for the guidance to the competent authority in the use of his discretion under section 19(1) of the Act there is enough guidance in the Act which can be gathered from the policy, and purpose of the Act as set out in the preamble and in the operative provisions of the Act.

(33) The relevant guiding principle is definitely clearer in the statute with which we are dealing than it was in the extreme *case of Jyoti Pershad* (24). The parliament has given an indication of the main determining criterion to be adopted for allocation of services inasmuch as the fair and equitable treatment is required to be meted out to the services. It would be in the nature of things impossible to lay down any rigid rules or guiding principles for allotment of employees of the erstwhile State of Punjab to the four successor States, as the main and supervening consideration which had to weigh with the Central Government in deciding this matter ought to have and must have been the necessity to provide a balanced cadre for each of the relevant services in the four successor States irrespective of merely personal considerations of the employees concerned. The preamble of the 1966 Act also tends to show that the object of distribution of services was to reorganise the States. Reorganisation of States includes reorganisation of the services of the new States. Such reorganisation necessarily envisages the machinery for providing each of the successor States with balanced cadres in its services. This itself is a sufficient guiding principle besides the principle contained in clause (b) of sub-section (4) of section 82, to which reference has already been made.

(34) After a careful consideration of the entire law on the subject, to which reference has been made by the counsel, and after keeping in view the preamble and the provisions of the Act, the objects of the statute and the other matters referred to above, we are of the considered opinion that section 82 of the 1966 Act does not violate the guarentee of equal protection of laws enshrined in article 14 of the Constitution.

(35) We have also been called upon by the counsel for the respondents to repel the arguments of the learned counsel for the petitioners based on article 14 of the Constitution on the ground that no foundation has been laid in any of the writ petitions before us for invoking the fundamental right conferred by that article. It has been rightly argued that for invoking article 14 of the Constitution all relevant facts must be clearly brought out to show that the petitioner is, in all material respects, situated similarly to some other persons against whom he has been meted out discriminatory treatment. After considering the relevant law on the subject, it was held by a Full Bench of this Court in *Mahant Lachhman Dass* v. *State of Punjab* (26), that unless such foundation is laid down by a writ petitioner in unequivocal terms he should not be allowed to invoke article 14 of the Constitution. For all these reasons, we find no force whatsoever even in the third contention of Mr. Lakhanpal.

(36) Mr. I. S. Saini, learned counsel for the State of Haryana, submitted in the two cases in which his State is a party that the State of Haryana has been unnecessarily impleaded as none of the impugned orders had been passed by that State. It is, indeed, correct that neither the State of Punjab nor the State of Haryana could have passed an order of final allocation under section 82 of the 1966 Act, but the impleading of those States by the petitioners in the respective cases appears to have been appropriate.

(37) This disposes of the common questions of law raised in these cases.

(38) In Mukand Lal's case, it was sought to be argued by Mr. Mohinder Singh Pannu that the impugned order (annexure 'A' to that writ petition) shows that the Central Government considered only the first representation of his client and that the subsequent representation submitted by Mukand Lal did not, in fact, go up to the Central Government. When, however, the Advocate-General for the State of Punjab, who had brought the relevant record with him, placed the record before the Court and categorically stated that howsoever belated the subsequent *volte face* of Mukand Lal might have been, it was forwarded to the Central Government with the recommendation of the Chief Secretaries against the petitioner; this point could not be pressed by Mr. Pannu. No other individual ground was

(26) I.L.R. (1968)2 Pb. & Hr. 499 (F.B.).

urged in Mukand Lal's case. That petition, therefore, fails and is dismissed. In the peculiar circumstances of the case, we make no order as to costs therein.

(39) I now proceed to consider the remaining two points urged by Mr. C. L. Lakhanpal, which points arise only in the case of Beant Singh, petitioner in writ petition No. 2914 of 1968. The provisions of section 82 of the 1966 Act, apply only to such persons, who were (i) immediately before the appointed day i.e., immediately before November, 1, 1966, (ii) serving, (iii) in connection with the affairs of the State of Punjab. The narrative of facts of Beant Singh's case, already given in an earlier part of this judgment, shows that the formal appointment of the petitioner as a Forest Ranger as well as his posting as such were made in the end of March or beginning of April 1967. It was on account of this peculiar feature of Beant Singh's case that his writ petition was admitted by the Motion Bench, of which I was a member, after the petitioner had produced his letters of appointment, etc., and it is a matter of regret that some of the petitioners in other cases appear to have subsequently represented to the Benches before which their petitions came up for admission that the position in their cases was the same as in Beant Singh's case.

(40) The solitary question on the answer to which the fate of the fourth contention of Mr. Lakhanpal would depend is whether it can be said in respect of Beant Singh petitioner that he was "serving" in connection with the affairs of the existing State of Punjab while he was undergoing the prescribed training at the Northern Forest Rangers College, Dehradun, in the training course for the years 1965—67. Though the petitioner was undergoing training at Dehradun, it is clear that he was doing so at the instance of the Punjab Government, at the cost of the Punjab Government, as a result of selection by the Punjab Government, on the payment of a stipend by the Punjab Government, and on the basis of a bond given by the petitioner to serve the Punjab Government at least for five years after the successful completion of his training. The communication, which was sent to the petitioner on March 24, 1965 (Annexure 'H'), informing the petitioner of his selection for training clearly stated, *inter alia*, that he would be appointed as a Forest Ranger subject to the proviso that he qualified himself at the College and received a satisfactory report from the College authorities at Dehradun on the completion of his Forest Rangers' course there.

Paragraph 3 of the said memorandum as well as the relevant statutory rules, to which reference will be made hereinafter, make it clear that the other condition precedent for his being allowed to take the training was that he had to enter into a written agreement and had to execute a bond in favour of the State of Punjab to serve it after completing the training. The argument of Mr. Lakhanpal to the effect that the petitioner could not be deemed to be in the service of the State of Punjab till the beginning of April, 1967, is no doubt correct, but at the same time it is clear that the Parliament deliberately used a much wider phraseology while enacting section 82 of the 1966 Act, than merely referring to persons appointed to public services or posts in the existing State of Punjab. In contradistinction to the expression "public services and posts in connection with the affairs of . . . . ." used in the purview of Article 309 of the Constitution and in contradistinction to the expression used in Article 311 of the Constitution, the phraseology used in sub-section (1) of section 82 of the 1966 Act, is "every person who . . . . . is serving in connection with the affairs of the existing State of Punjab." The use of these words in section 82 while referring to the services of the existing State of Punjab is indeed meaningful. Disastrous results would follow from the interpretation which Mr. Lakhanpal wants to put on section 82 of the 1966 Act. The aforesaid Act does not leave out anything relating to reorganisation of the existing State of Punjab including the services of the State. The expression "services" used in section 82(4) includes 'service in the making' i.e., persons like those (i) who might have taken competitive provincial services examinations and in whose cases merit lists might have been prepared by the Public Service Commission of the existing States of Punjab but who might not have been appointed or posted to any place or to any post before November 1, 1966, or (ii) who might have been otherwise selected for appointment but not actually appointed. The construction which Mr. Lakhanpal wants to place on section 82 would result in such persons being told to go home, as the competitive examination taken by them and its results as well as selections already made would then be deemed to have become infructuous. The logical conclusion of Mr. Lakhanpal's argument is that such persons will have no right to be appointed to any post in any of the successor States. This could not possibly have been envisaged by section 82. In fact the object and scope of section 82 becomes clear from a reference to the phraseology of clause (a) of sub-section (4) of section 82 which states that the Central Government has not only to allot existing personnel to the

successor States but has to undertake the work of "the division and integration of the services among the successor States." The division of services would, in my opinion, include the allocation of then Punjab employees who might have been serving some other State on deputation or might have been on leave on October 31, 1966. The expression would include the division of even vacant posts and also the division of such personnel who would have had a right to claim appointment to any post in the existing State of Punjab it it had not been divided by the 1966 Act. The words used in section 82 are not "serving in the existing State of Punjab" but "serving in connection with the affairs of the existing State of Punjab". That takes out of consideration the geographical location of the places where any one was working on October 31, 1966, in connection with the affairs of the then existing State of Punjab. That is why the fact that the petitioner was undergoing training at Dehradun and not within the existing State of Punjab is wolly irrelevant. The observations of their Lordships of the Supreme Court in *S. A. Venkataraman* v. *The State* (27), on which Mr. Lakhanpal relied in this connection, do not appear to be relevant for deciding this issue. In paragraph 16 of that judgment, it was observed, while construing section 6 of the Prevention of Corruption Act, 1947, that "the conclusion is inevitable that at the time a Court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of section 6 can apply." The above-quoted observations could have helped the petitioner if it had been argued on behalf of the State that it was either not necessary for Beant Singh to be serving in connection with the affairs of the State before November 1, 1966, or that even if he had ceased to be in such service thereafter, he had to be allocated to one of the successor States. That is not the case here. It was conceded by the learned Advocate-General that if it is found that the petitioner was not serving in connection with the affairs of the existing State of Punjab on October 31, 1966, section 82 would not be applicable to him. It was, however, contended that the petitioner was so serving. For the same reason, the observations of the Supreme Court in *Keshavlal Mohanlal Shah* v. *State of Bombay* (28), on which also Mr. Lakhanpal relied to the effect that sanction under section 197 of the Code of Criminal Procedure is not necessary for a Court to take cognizance of an offence committed by a Magistrate after he

(27) A.I.R. 1958 S.C. 107.
(28) A.I.R. 1961 S.C. 1395.

had ceased to be a Magistrate at the time the complaint was made, are not relevant for deciding this case.

(41) The Governor of Punjab had framed "The Punjab Forest Subordinate Service (Executive Section) Rules, 1944" (published in Volume II of the Punjab Forest Manual at pages 69 onwards) relating to the various Punjab Forest Services. "Service" is defined in rule 2 (j) of the aforesaid rules to mean "the Punjab Forest Subordinate Service (Executive Section)". Rule 3 states that the service shall consist of Forest Rangers and other officers named therein and there shall be such number of posts of each of those clauses as are specfied in Appendix 'A' attached to those rules. Rule 2 (b) states that "college means the Indian Forest Rangers College, Dehradun". Clause (d) of rule 2 provides that "direct appointment" means an appointment made otherwise than by the promotion of a member of the service or transfer of a person already in the service of the State. Rule 6 lays down the qualifications and method of recruitment of Forest Rangers. The rule states, *inter alia,* that the Chief Conservator of Forests shall, subject to the regulations contained in Appendix 'C' se'ect from amongst the classes of persons named in the rule such number of persons for training at the college as are likely to be required to fill vacancies of Forest Rangers in the service every year. 'Class I' mentioned in the rule is of persons not already in the service of the State. Necessary qualifications making persons eligible for selection are laid down in the proviso to that rule. Rule 7 provides for the method of appointments to the posts of Forest Rangers. Clause (1) of sub-rule (b) of rule 7 provides that appointments to posts of Forest Rangers shall be made to the sixth grade by selection from amongst persons who have been selected for training under rule 6 and have obtained the higher standard certificate granted by the college. Rule 11(1) provides that "an accepted candidate for direct appointment as Forest Rangers will be required to undergo a preliminary training for a period of three months in the Punjab forests before joining the college. Sub-rule (2) of rule 11 states, *inter alia,* that persons selected under rule 7 shall before undergoing training at the college execute an agreement and bond in the prescribed forms and those selected under rules 8 and 9 before undergoing training at the college execute a bond in the prescribed form. The mandatory nature of the requirement for executing the agreements and bonds is apparent from the last sentence in sub-rule (2) of rule 11, which states—"If any such member or any other person fails

so to execute the agreement and bond or the bonds, as the case may be, he shall not be allowed to undertake such training". Sub-rule (3) of rule 11 provides that "a candidate undergoing three months' preliminary departmental training in the Punjab Forests shall be allowed Rs. 25 per mensem as a consolidated allowance to meet all his expenses". Sub-rule (4) states that while under training at the college every candidate would be entitled to receive payment of all his fees and travelling allowances as prescribed by the authorities concerned from time to time, in addition to a stipend at the rate of Rs. 50 per mensem or such other rate as may be fixed by Government from time to time. Conditions of service are laid down in rule 12. Sub-rule (1) of that rule states that "members of the service who are appointed against permanent vacancies shall on appointment to any class of posts specified in Appendix 'A' remain on probation for a period of one year". Rule 13 deals with fixation of seniority of members of the service, which counts from the date of substantive appointment. Rule 14 prescribes the pay of all members of the service. Rule 15 then states—

> "Members of the service are liable to be transferred under the orders of the Chief Conservator from posts within their respective classes of appointment to other such posts any where in the Punjab or Delhi, or under the orders of the appointing authority within the jurisdiction of such authority."

Appendix 'C' attached to the rules contains the procedure for direct recruitment of Forest Ranger candidates. Paragraph 4 of the Appendix provides that all candidates who have been selected for admission to the College are required before joining the College, to undergo a course of practical training in the forests for at least three months, and that candidates will not be allowed to join the College unless they can produce a certificate signed by the Divisional Forest Officer under whom they have served and countersigned by the Chief Conservator that they have undertaken the course of practical training in a satisfactory manner and are likely to become useful Forest Officers.

(42) A critical survey of the aforesaid and other rules clearly shows that as soon as a person is selected for training in the college and he accepts the terms of his appointment as a trainee and executes the prescribed agreements and bonds, he starts serving in connection with the affairs of the State and it cannot be said that it is the State which is serving him at its cost to give him training.

so that he can do anything he likes after the completion of his training. Though the petitioner had not become the member of the service before his actual appointment, he was nevertheless serving in connection with the affairs of the existing State of Punjab while he was undergoing training at the cost of the State and was, in addition, in receipt of stipend from the State coffers. The relevant rules appear to me to imply that it is neither open to the State to deny the post of a Forest Ranger to a trainee if he successfully completes the course of training and fulfils all other requisite conditions nor is it open to the trainee to refuse to take formal appointment in the service on such completion of his training. It is the duty of the Central Government while undertaking division of services envisaged by sub-section (4) of section 82 to allot and integrate even the trainees to one or other of the successor States.

(43) "Service" is defined in "Bouvier's Law Dictionary" at page 3048 as "the being employed to serve another". As trainee in the college, the Forest Rangers in embryo are, in my opinion, definitely employed to serve the State, and are not undergoing training merely for their own benefit. In "Stroud's Judicial Dictionary", reference is made to "service" meaning even the service which the tenant, by reason of his fee, oweth unto his lord. In "Corpus Juris Secundum" (Volume 79) it is stated that "the word 'service' has a multiplicity and a variety of meanings and different significations. It is not a simple word with a simple meaning, leaving no room for construction, but rather it is a broad term of description, which varies in meaning according to the sense in which it is used and the context in which it is found, and the sense in which it is used must be determined from the context. Thus the Courts have found it impracticable to attempt a definition by which to test every case that may arise." One of the meaning of the word 'service' in the "Corpus Juris Secundum" given is "a master-servant relationship or it implies a submission to the will of another as to direction and control". It has again been referred to as "in the interest and under the direction of others" or "in the interest of a person or of a cause". The term 'service' has also been referred to in 'Corpus Juris Secundum' as "sometimes employed to denote the concept of duty" and "applies not only to duty already done and being done but also to required duty". It is again stated (at page 1141 of volume 79) that 'service' also includes "any system or organisation instituted for the accomplishment of such duty, as military or naval service, the consular or diplomatic service". The word

'service' has also been used to signify "the act or means of supplying some general demand or the supply of needs". It is in the widest possible sense that the expression "serving in connection with the affairs of the State" has been used in section 82(1) and the word 'services' has been used in section 82(4). Those persons who were undergoing training with a view to subsequently take service under the State, and were under an obligation to do so, were, in my opinion, serving in connection with the affairs of the State.

(44) I am further inclined to think that Mr. Sibal was correct in submitting that if on a strict and meticulous construction of section 82(1) it could be argued that persons undergoing training in a situation like the one in which the petitioner was taking the course in the Forest Rangers' College at Dehradun, are not covered by sub-section (1) of section 82, we should, for the purposes of construction of the said provision, resort to modification of the language of the provision to meet the true intention of the parliament to cover all kinds of services actual or impending, including inchoate services of the existing State of Punjab by applying the well-known principle of *causes omissis*, to which reference has been made by Maxwell 'On Interpretation of Statutes' (1953 Edition—at page 235). It does not appear to be necessary to dilate on this subject, as I am definitely of the opinion that the language in which section 82 is couched is wide enough to cover the case of trainees like the petitioner.

(45) Mr. Lakhanpal then submitted that the word 'service' as defined in the relevant Forest Rules and it cannot be said that the petitioner was in service before April, 1967, within the meaning of that definition. It is, no doubt, true that the petitioner was not in service within the meaning of the definition of that word contained in the Forest Rules, but the word 'service' or the word 'serving' has to be construed by us not as it occurs in the Forest Rules but as it occurs in sections 82 of the 1966 Act. The definition of the word 'service' in the Forest Rules cannot, in my opinion, serve as an aid or a guide for construing the words 'serving' and 'services' as they occur in section 82 of the 1966 Act.

(46) This takes me to the last submission of Mr. Lakhanpal, which again is peculiar to the case of Beant Singh. On the basis of certain observations made by their Lordships of the Supreme Court in paragraph 7 of the A.I.R. report in *Jai Ram* v. *Union of India* (29); and in paragraph 11 of the A.I.R. report in *State of Punjab* v. *Amar Singh Harika* (30); and also on the basis of the judgment of the

(29) A.I.R. 1954 S.C. 584.
(30) A.I.R. 1966 S.C. 1313.

Allahabad High Court in *Chhotey Lal* v. *State and others* (31); Mr. Lakhanpal contended that the Central Government should not have taken into consideration the first request of the petitioner to allocate him to Himachal Pradesh when the said request had already been withdrawn before it was granted. It is needless to deal with the legal aspect of the matter, as the petitioner has no case whatever on merits on this point for more than one reason. Firstly, the request of the petitioner for being allocated to Himachal Pradesh instead of being allotted to Punjab was not unilateral or wholly independent of everything else. As already stated, it was a joint request of one Surjit Singh and the petitioner for interchanging their positions regarding their originally proposed allocations. Surjit Singh, who had been allocated for being appointed on completion of training to the Himachal Pradesh, wanted to be posted to Punjab and Beant Singh, petitioner, who had been allotted to the State of Punjab, wanted to interchange his place in Himachal Pradesh with Surjit Singh. It was this joint request contained in the petitioner's admitted application (Annexure R-1) that was granted by the Central Government. It is impossible for us to know as to what is the position of the cadre of Forest Rangers in Himachal Pradesh or Punjab and whether, after allowing Surjit Singh to go to Punjab at his joint request with Beant Singh, if there is still another post where the Central Government can possibly have brought back Beant Singh also. Be that as it may, there is no equity in favour of the petitioner in trying to back out of the accommodation which he had given to Surjit Singh in his application (Annexure R-1) without joining Surjit Singh in the revised request. The petitioner was, in my opinion, not competent to withdraw singly the request made by him along with Surjit Singh. Surjit Singh has admittedly not joined the petitioner in reversing his decision. A bilateral agreement cannot ordinarily be rescinded unilaterally. Surjit Singh is not even a party to the proceedings before us. Secondly, it does not appear to be correct for the petitioner to state that nothing had been done in connection with his request contained in Annexure R-1 till he withdraw the said request. The request contained in Annexure R-1 made in January, 1967, had been processed by the committee of Chief Secretaries in July, 1967, and only its approval by the Central Government remained to be accorded. He, however, changed his mind and submitted his representations for being allotted back to Punjab only in June/July, 1968, i.e., about a year after the committee of Chief Secretaries had recommended to

(31) A.I.R. 1956 All. 153.

the Central Government that his joint request be granted. The learned Advocate-General, who brought the relevant record of the case to the Court stated that the subsequent representation (copy of Annexure 'B' to the writ petition) was also forwarded to the Central Government, but it was not recommended by the committee of Chief Secretaries and was not acceded to by the Central Government. On the facts of this case, we are satisfied that the Central Government was aware of the subsequent *volte face* of the petitioner in early August, 1968, when they gave their final decision in the matter of allocation of the petitioner to the Himachal Pradesh. None of the additional points raised by the learned counsel for Beant Singh having succeeded, his petition must also fail. At the time of the conclusion of the hearing, we reserved judgment in this case. For the reasons already stated, therefore, we now proceed to dismiss this petition, too, though without any order as to costs.

(47) The peculiar facts of the case of Mrs. Baidwan (Civil Writ No. 3575 of 1968) have already been set out in an earlier, part of this judgment. From those facts, it is apparent that the petitioner was from the very beginning insisting on her being allocated to the State of Punjab for various reasons. Though it is the Central Government, who is the final arbiter in the matter of allocation of services under section 82 of the Act, a statutory duty is cast on it to consider any representation which might be made by a concerned employee against his or her provisional allocation. The petitioner as well as her husband made written representations in that behalf. Though there are certain indications in at least two of those representations that the petitioner and her husband thought that there had been some possible delay in making the same, it has not even been suggested on behalf of the State that their representations were, in any manner, out of time. Nor has it been suggested by the learned counsel that the grounds on which the petitioner wanted to be allocated to the State of Punjab were either irrelevant or not valid. In her case, it has been clearly stated in the impugned order, dated September 13, 1968, that it has not been possible to allocate her to the State of Punjab "for want of a vacancy in the Punjab cadre". This decision is contained in Annexure 'E' which was issued by the Chief Secretary to the Punjab Government. No copy of the order of the Central Government has been produced. It is not even clear from the record before us if the Central Government itself dealt with all the representations submitted by or on behalf of the petitioner. In reply to the Chief Secretary's letter, the petitioner had unequivocally stated in her further representation (Annexure 'F') that

she would be willing to go on leave with pay for any duration till there was a vacancy in Punjab to accommodate her. If the entire matter had been placed before the Central Government and if her request of even going on leave without pay for any duration till there was a vacancy in Punjab to accommodate her was brought to its notice, we have no doubt that the Central Government might have taken a compassionate view of her case, particularly because her husband, who is in the army, is in the field area and his aged parents, who are settled in Punjab, have to be looked after by the petitioner. These are, however, matters relating to the merits of the case, with which we are not concerned. In *P. K. Roy's case* (23), the final gradation list was struck down in view of the special circumstances of that case. They were held to be entitled to make a representation with regard to the points in dispute. We have already held that the employees of the existing State of Punjab have no civil or statutory right to be allocated to any particular successor State. But all such employees have (i) a right to represent against their provisional allocation and (ii) a right to have those representations considered and disposed of on merits by the Central Government before passing the order of final allocation. In this case the petitioner did exercise her right of submitting representations herself as well as through her husband. The Central Government does not, however, appear to have itself dealt with all those representations including her last communication (Annexure 'F') and does not appear to have given the decision of the final allocation of the petitioner itself after keeping in view all the relevant facts and circumstances. It was on this account that by our short order, dated December 20, 1968, we held that there is nothing on the record of this case to show that the representations of the petitioner were considered by the Central Government and that the order of final allocation was passed in accordance with the requirements of subsection (4) of section 82 of the 1966 Act. We have now recorded the reasons for our order of that date allowing the writ petition of Mrs. Amarjit Baidwan to the extent that the impugned orders of the Government (Annexures 'E' and 'G') insofar as they relate to this petitioner are annulled and the Central Government is directed to consider all the representations of the petitioner, to which a reference has already been made, and to give a fresh decision about the final allocation of the petitioner in accordance with law. The costs of the petitioner in Civil Writ No. 3575 of 1968 will be borne by the Central Government.

RANJIT SINGH SARKARIA, J.—I agree.

K. S. K.