

PETITIONER:
RESERVE BANK OF INDIA & ORS.

Vs.

RESPONDENT:
C.N. SAHASRANAMAN & ORS.

DATE OF JUDGMENT 30/04/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1830 1986 SCR (2) 881
1986 SCC Supl. 143 1986 SCALE (1) 939
CITATOR INFO :
RF 1987 SC1399 (20)
D 1987 SC2086 (19,30)

ACT:

Centre-wise seniority and promotion through written departmental examinar - Reserve Bank of India (Staff) Regulations 1948 - Administrative Circular No. 8 and 9 dated 13.5.1972, clause II(a)(i) of the Scheme for Promotion - Staff Officers Grade II (Now designated Grade A) covered under - Whether part of the scheme is violative of guarantee of equality before law and equal opportunity in Public employment as enshrined in Article 14 and 16 of the Constitution - Industrial Disputes - Settlement by direct negotiations or through collective bargaining value of.

HEADNOTE:

The Reserve Bank of India had its offices at nearly 15 centres throughout India. The service conditions of the employees of the Reserve Bank are governed by the Reserve Bank of India (Staff) Regulations, 1948 and Administrative orders passed from time to time and also by Industrial Disputes Awards or Settlements by negotiations or settlement by collective bargaining. In the Reserve Bank separate departmentwise, Groupwise seniority and promotion for cadres of officers and non-officers (Award Staff) was prevalent from time to time.

In September 1962, the issue of maintenance of combined seniority list at each centre for the purpose of promotions was referred to the National Industrial Tribunal presided over by Justice K.T. Desai. The recommendations of the said Desai Award were approved by the Supreme Court in All India Reserve Bank Employees' Association v. Reserve Bank of India, [1966] 1 S.C.R. 25 @ 57 and Reserve Bank of India v. N.C. Paliwal & Ors., [1977] 1 S.C.R. 377. In 1970, the Supervisory Staff in class I was upgraded to staff officers in class I pursuant to the Memorandum of Settlement dated 9th January, 1970 between

882

the Bank and the All India Supervisory Staff Association, subject to certain conditions. The channel of promotion from the post of clerk (Grade II) is staff officer (Grade A) and further from that post to the staff officer (Grade B) and so

on upto Grade F. Prior to 6th June 1970, oral interviews of all the eligible candidates were held for being considered for promotion. Then Administrative circular No. 20 was introduced for the first time for departmental promotions of clerk Grade I/(Assistant) etc. to the post of Staff Officer Grade II (Sub-Accountants & Research Superintendent) in all the groups. On 7th May 1972, the Bank took several steps towards equalising promotional opportunities of employees by introducing the Optee Scheme of 1965, the Optee Scheme of 1966 and finally by entering into a Memorandum of Settlement dated 7th May 1972 with the Association accepting the principle of maintenance of a combined seniority. On or about 7th May 1972, the Bank formulated a "Scheme for Promotion; Staff Officer Grade II" after giving full opportunity to the Association to make its suggestions. On 7th May 1972 the Bank and the Association further agreed by exchange of correspondence that the ratio of direct recruits to the total strength of staff officers Grade II shall be at 17.5% - 82.5%. On 13th May 1972, the Bank introduced the Administrative Circular No. 8 on "Scheme for Promotion: Staff Officers Grade II". On the same day the Bank introduced simultaneously the Administrative Circular No. 9 on "Scheme for combined Seniority List and Switch over from non-clerical to clerical cadre with effect from 7th May 1972, Both the circulars are binding on all employees of the Bank in view of the decision of the Supreme Court in N.C. Paliwal's case. On May 22, 1974, the Bank took a decision based on the recommendations of the cadre Review Committee under the Chairmanship of Mr. Justice J.L. Naim and issued Administrative circular No.15 to prepare a common seniority List and to provide for inter group mobility at the lowest level of officers in Grade A with effect from 1st January 1970. On or about 7th January 1978, the Bank took further decision, based on the recommendations of two Committees headed by Mr. Justice Naim and Mr. Justice Thareja respectively and issued Administrative Circular No. 8 to combine the seniority of all officers in Grade 'B' and above with effect from 22nd May 1974 with a view to equalise opportunity for promotions among officers. Both the circulars Nos. 15 of 1974 and 8 of 1978, were approved by the Supreme Court in V.T. Khanzode & Ors. v. Reserve Bank of India & Anr., reported in [1982] 2 S.C.C. 7.

883

%

The respondents who were grade II clerks working at Nagpur Reserve Bank ever since their employment which commenced somewhere between 1960 and 1965 who were aggrieved by Part of Clause II(a)(i) of the scheme for promotion - Staff Officers Grade II covered under Administration Circular No. 8 challenged its validity averring that under the new scheme chance to appear in the examination depended not on relative merits but merely on the fortuitous circumstances, namely, the number of vacancies occurring in a particular centre in a panel year which had no nexus with the purpose of promotion viz. to secure efficient cadre of staff officers. The High Court accepted the pleas of the respondents and by its order dated 19th March 1981 struck down that part of clause II(a)(i) of the scheme listed "Number of candidates for the qualifying test". As a result no examination could be held for panel years 1980-81, 1981-82 and 1983-84. Hence the appeal by special leave.

Allowing the appeal and approving the modified scheme of 1984 as per the orders and directions of the Supreme Court including holding a referendum, the Court,

^

HELD: 1. In service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touch-stone. Further, whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people are concerned, in the abstract. [909 D-E; B-C]

Kamal Kanti Dutt & Ors. v. Union of India & Ors., [1980] 3 S.C.R. 811 referred to.

2. Circular No. 9 is a counterpart of Circular No. 8. Circular No. 8 having been held valid, by the Supreme Court Circular No. 9 must also follow to be good. Circular No. 9 cannot stand in vacuum and in isolation. It is a step to the fulfilment of the object to be achieved by Circular No. 8. Viewed in that point of view and as a feasibility and having regard to the factors and in regard to the history of Reserve Bank employees, the scheme as modified by the Bank and as

884

accepted by vast majority indeed an over willing majority of the workmen is a proper and just scheme and does not suffer from the vice of article 14 or article 16 or any other constitutional guarantees. [909 F-G]

3.1 Settlement of disputes by direct negotiations or settlement through collective bargaining is always to be preferred for it is best suited for industrial peace which is the aim of legislation for settlement of labour disputes. [909 H; 910 A]

New Standard Engineering Co. Ltd. v. N.L. Abhyankar & Ors., [1978] 2 S.C.R. 798 and Tata Engineering & Locomotive v. Their Workmen, [1982] 1 S.C.R. 929 referred to.

3.2 The reference held pursuant to the orders of this Court dated 2nd May, 1984 undoubtedly indicates that majority of the employees are in favour of acceptance of the modified settlement. In matters of service conditions it is difficult to evolve as ideal set of norms governing various conditions of services and in grey area where service rules operated, if more than one view is possible without sacrificing either reasons or commonsense the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few. These principles however, significant do not authorise the majority of the employees to trample upon the constitutional guarantees or rights of the individuals or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger. But in judging the content of the constitutional rights, the entire perspective of the equality of opportunity here and denial of equal right in public employment have to be viewed in a fair, reasonable and just perspective. Viewed in that light, it is true there may be individual instances exemplifying injustices by postponing or delaying the chances of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in light of the other considerations it must be observed that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might to result but the paramount consideration is the reconciliation of the conflicting claims of two important

885

constituents of service - one which brings fresh clerical employees and the other mature experience. There has been a happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed rights of the opposing respondents have occurred. [910 C-H; 911 A-B]

3.3 The promotion scheme having been evolved after careful consideration and having been in operation ever since the inception of the Bank with modification from time to time as a result of the negotiations under the Industrial Disputes Act should not be modified drastically. In such matters one should hasten slowly. [911 B-C]

4.1 The promotion on the basis of centrewise seniority, in the instant case is constitutionally valid, inasmuch as the appellant bank is an undertaking which comes within the Industrial Disputes Act, 1947 and the class III employees are fully covered by the definition of the term "workman" in section 2(s) of the said Act and one of the principles normally applicable in fixing their terms and conditions of service is industry-cum-region principle. [893 G-H]

Ramachandra Shankar Deodhar & Ors. v. State of Maharashtra & Ors., [1974] 2 S.C.R. 216 distinguished.

Hindustan Antibiotics v. Workmen, [1967] 1 S.C.R. 652 and All-India Reserve Bank Employees' Association v. Reserve Bank of India, [1966] 1 S.C.R. referred to.

4.2 The integration of different cadres into one cadre could not be said to involve any violation of the equality clause. The right of promotion should not be confused with mere chance of promotion. Though the right to be considered for promotion was a condition of service, mere chances of promotion were not. It is clear therefore, that the chances of promotion in some areas occur more often in smaller centres than in other bigger centres like Bombay, Calcutta, Delhi but that is fortuitous and would not really affect the question, and violate articles 14 and 16 of the Constitution. The justice of the case should be judged in conjunction with other factors, the convenience, the future of the family etc. [899 G; 903 E-F]

886

Kamal Kanti Dutt & Ors. v. Union of India & Ors., [1980] 3 S.C.R. 811, at pages 841-842; Mohd. Shujat Ali v. Union of India, [1975] 1 S.C.R. 449 and Reserve Bank of India v. C.T. Dighe, [1982] 1 S.C.R. 107 at 121-122 referred to.

4.3 Regulation 31 of the Reserve Bank of India (Staff) Regulations 1948 is subject to the condition that "unless in any case it be otherwise distinctly provided." In the instant case, it has been distinctly provided in the appointment letters as to where the class III employees of the Bank are liable to serve. All appointment letters issued to all staff members appointed in class III and below ever since the inception of the Bank contained, identical or similar provision specifying the offices in which of the Bank these employees are required to work. Therefore, there was definite provision contrary to as contemplated by Regulation 31 of the Reserve Bank of India (Staff) Regulation 1948 and therefore the general provisions of Regulation 31 would not have any application. [904 B-C; D-E]

4.4 If an All-India cadre is enforced in respect of Class III employees, it would result in injustice to all the employees in that class at the injustice to all the employees in that class at the smaller centres for a considerably long period of time leading to industrial unrest. The result of applying the principles of an All-

India cadres for this class of employees would be that the senior-most in that whole cadre All-India wise would alone have to be considered for promotion. In such a case, for a considerable long time, only employees of the older offices namely, Bombay, Nagpur, Madras, Calcutta and Delhi will have to be considered, they being by far senior most among the All-India employees and such a consideration and empanelling would continue for a very long time as the principal basis of the settlement was not one of promotion on merit but rather an upgradation on mere seniority, the only qualification being an examination to determine fitness. Once fitness was determined by the examination the ranking in that examination did not come into play thereafter and the successful candidates were again listed according to centrewise seniority in the matter of upgradation and promoted as and when vacancies at that centre occur. [905 A-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3234 of 1981.
887

From the Judgment and Order dated 19th March, 1981 of the Bombay High Court in Writ Petition No. 2334 of 1980.

G.B. Pai and R.H. Parihar for the Appellant.

C.N. Sahasranaman in person, S.P. Sharma in person, K.T.A. Anantha Raman, R. Basu Devan, A.K. Goel, Ajit Pudissery, M.S. Gupta and V.J. Francis for the Respondents.

The Judgment of the Court was delivered by Sabyasachi Mukharji, J. In the Reserve Bank of India separate Departmentwise and Groupwise seniority and promotion for cadres of Officers and non-Officers (Award Staff) was prevalent. This would be apparent from the decision of this Court in Reserve Bank of India v. N.C. Paliwal & Ors., [1977] 1 S.C.R. 377 as well as V.T. Khanzode and Ors. v. Reserve Bank of India and Anr., [1982] 2 S.C.C. 7.

In September, 1962, need was felt for maintenance of combined seniority list at each centre for the purposes of promotions recommended by National Industrial Tribunal presided over by Mr. Justice K.T. Desai. The recommendations of the said Desai Award for centre-wise combined seniority were approved by this Court in 1966. See in this connection the observations in All India Reserve Bank Employees Associations v. Reserve Bank of India, [1966] 1 S.C.R. 25 at 57 and Reserve Bank of India v. N.C. Paliwal & Ors., (supra).

In 1970, the Supervisory Staff in Class I was upgraded to Staff Officers in Class I pursuant to the Memorandum of Settlement dated 9th January, 1970 between the Bank and the All India Supervisory Staff Association, subject to certain conditions.

Administrative Circular No. 20 dated 6th June, 1970 was issued on introduction of written examination for departmental promotions of clerk Grade I/Assistants etc. to the post of Staff Officers Grade II (Sub-Accountants and Research Superintendents) in all the groups. This circular was not made operative.

888

On 7th May, 1972, the Bank took several steps towards equalising promotional opportunities of employees by introducing the Optee Scheme of 1965, the Optee Scheme of 1966 and finally by entering into Memorandum of Settlement

dated 7th May, 1972 with the Association accepting the principle of maintenance of a combined seniority list at a centre. See in this connection the observations in Reserve Bank of India v. N.C. Paliwal, (supra).

On or about 7th May, 1972, the Bank formulated a Scheme for Promotions : Staff Officer Grade II' after giving full opportunity to the Association to make its suggestions. On 7th May, 1972, the Bank and the Association further agreed by exchange of correspondence that the ratio of direct recruits to the total strength of Staff Officers Grade II should be at 17.5% : 82.5%. Reference in this connection may be made to Annexure II & III to the further Affidavit for the bank filed on 27th August, 1982 and which are in the appeal Paper Book at p. 134 onwards.

On 13th May, 1972, the Bank introduced the Administrative Circular No. 8 dated 13th May, 1972 on 'Scheme for Promotions - Staff Officers Grade II' which is binding on all employees of the Bank. On the same day the Bank introduced simultaneously the Administrative Circular No. 9 on 'Scheme for Combined Seniority List and switchover from non-clerical to clerical cadre' with effect from 7th May, 1972 which is binding on all employees of the Bank. The Constitutional validity of this scheme was upheld by this Court in Reserve Bank of India v. N.C. Paliwal (supra).

On 22nd May, 1974, the Bank took a decision, based on the recommendations of the Cadre Review Committee under the Chairmanship of Mr. Justice J.L. Nain and issued the Administrative Circular No. 15 dated 22nd May, 1974 to prepare a common seniority list and to provide for inter group mobility at the lowest level of officers in Grade 'A' with effect from 1st January, 1970. See V.T. Khanzode & Ors. v. Reserve Bank of India, (supra).

On or about 7th January, 1978, the Bank took further decision, based on the recommendations of two Committees, one headed by Mr. Justice Nain and another headed by Mr. Thareja,

889 and issued Administrative Circular No. 8 dated 7th January, 1978 to combine the seniority of all officers in Grade 'B' and above with effect from 22nd May, 1974 with a view to equalise opportunity for promotions among officers. In this connection, reference may also be made to V.T. Khanzode & Ors. v. Reserve Bank of India, (supra).

This appeal arises from a decision of the division bench of the Bombay High Court, Nagpur dated 19th March, 1981 whereby it has struck down a part of clause (II)(a)(i) of 'the Scheme for Promotion - Staff Officers Grade II (now designated Grade 'A') covered under the Administration Circular No. 8 dated 13th May, 1972. It may be mentioned that as a result no examination could be held for panel years 1980-81, 1981-82, and 1982-83.. The said clause was as follows :

"II. Number of candidates for the qualifying test:-

(a)(i) As estimate of the vacancies anticipated to occur in each office during a 'panel year' i.e. 1st September to 31st August will be declared by the Bank in advance and the number of candidates in that office to be called for the test in order to fill those vacancies in that office will not exceed twice the number of such vacancies subject to sub-clause....."

It may be mentioned that the decision was rendered in respect of a petition under Article 226 of the Constitution by three petitioners who were Grade II clerks working at

Nagpur Reserve Bank ever since their employment which commenced somewhere between 1960 to 1965. The Reserve Bank has its offices at nearly 15 centres throughout India. The service conditions were governed by the Reserve Bank of India (Staff) Regulations, 1948 (hereinafter called "Regulations").

The High Court by its order which is under appeal has set aside the impugned part of the scheme. It would be necessary to refer to the said judgment briefly.

It may be mentioned that this judgment of the High Court was delivered on 19th March, 1981. This Court granted special leave against the said judgment on 4th December, 1981. Then

890

after that on 5th March, 1982, this Court upheld the constitutional validity of the Administrative Circular No. 8 dated 7th January, 1978 to combine the seniority of all Officers. See V.T. Khanzode & Ors. v. Reserve Bank of India, (supra). This Court further directed on 29th July, 1982 that in the interest of justice All India Reserve Bank Employees Class III Workmen Associations and All India Reserve Bank Workers Organisation be added as the party-respondents, and the appeal was heard for some time. Then this appeal after hearing was adjourned and this Court directed the Reserve Bank to frame a new scheme for promotion by order dated 20th October, 1982. On 13th December, 1982, the Bank filed further affidavit, inter alia, annexing revised draft of clause II to the Scheme for Promotion of Staff Officers Grade 'A' annexed to the Administrative Circular No. 8. This was submitted for acceptance on behalf of the appellants before us. The amendment was opposed by the opposing respondents by their Affidavits-in-Opposition.

On 21st March, 1983, it is stated, that the Bank entered into a settlement by exchange of letters with All India Reserve Bank Employees Association which is recognised and representative Union of Class III Workmen employees. The Bank thereafter filed a Rajoinder setting out principles governing recruitment and promotion of Staff Officers Grade 'A' on 22nd February, 1983 including the modification of the existing scheme mutually agreed between the Bank and the Association. On 2nd May, 1984, this Court directed that the settlement between the Bank and the Association be referred to Class III employees and opinion of the majority shall be taken on the basis of referendum by secret ballot and the result of the referendum should be communicated to this Court on 16th July, 1984 and the appeal to be heard thereafter. The result of the referendum by secret ballot was filed by the Bank by an Affidavit. The summary of the result of the referendum seems to be as follows :

"PARTICULARS"	TOTAL VOTES	PERCENTAGE TO
-----	-----	-----
	CAST	AGGREGATE NO. OF VOTES CAST
-----	-----	-----
No. of votes accepting the Settlement	11,309	67.67%
891 No. of votes not accepting the Settlement	5,277	31.58%
No. of votes declared invalid	126	00.75%
	-----	-----
	16,712	100.00%

Total number of eligible voters : 18,953
Total votes polled :16,712 (88.18%)"

The main question which needs determination is whether part of the scheme mentioned before introduced by the Reserve Bank of India is violative of guarantee of equality before law and of equal opportunity in public employment as enshrined in articles 14 and 16 of the Constitution. The High Court noted that the point arose at the instance of three petitioners who were Grade II working at Nagpur branch of Reserve Bank ever since their employment which commenced somewhere between 1960 to 1965.

The Reserve Bank has its offices at nearly 15 centres throughout India. The channel of promotion from the post of Clerk (Grade II) is Staff Officer (Grade A) and further from the post to the Staff Officer (Grade B) and so on upto Grade F. Prior to 6th June, 1970, oral interviews of all the eligible candidates were held for being considered for promotion. Then Administration Circular No. 20 was issued introducing scheme of Written Examination for the first time for giving departmental promotions. The learned judges of the High Court were of the view that perhaps this was done to introduce element of objectivity in the test. Candidates who passed the said qualifying examination were included in the 'fit' list and became eligible being considered for promotion to the next higher post. The High Court was concerned, as mentioned hereinbefore, with the said new scheme which is introduced by Circular dated 13th May, 1972.

Analysing the said scheme, the High Court was of the view that under the new scheme candidates from a particular centre numbering twice the anticipated vacancies in that centre alone were eligible to appear in the departmental
892

examination and consequently to qualify for promotion. The grievance of the petitioners before the High Court was that under the new scheme, chance to appear in the examination depended not on relative merits but merely on the fortuitous circumstances, namely, the number of vacancies occurring in a particular centre in a panel year. According to the petitioners, this had no nexus with the propose of promotion viz. to secure efficient cadre of Staff Officers and therefore the scheme, according to the petitioners, was bad in law. The High Court found considerable force in this submission.

In the impugned judgment under appeal the High Court relied on Ramchandra Shankar Deodhar & Ors. v. State of Maharashtra & Ors., [1974] 2 S.C.R. 216. According to the High Court the promotion on the basis of Centre-wise seniority was opposed to the said decision of this Court. There, the petitioners were Tahsildars in the erstwhile State of Hyderabad. After the new State of Bombay was constituted with territories drawn from various existing States including Hyderabad under the States Reorganisation Act, 1956, equation of posts and determination of inter se seniority was done by the Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957. Under these rules of 1957, the Government of Bombay declared that the posts of Mamlatdar in the former State of Bombay should be deemed to be equivalent to the posts of Tahsildar from the former State of Hyderabad and the posts of Deputy Collector in the former State of Bombay should be deemed to be equivalent to the posts of Deputy Collector allocated from the former State of Hyderabad. The recruitment to the posts of Deputy Collector was provided for by Rules of 30th July, 1959 (called 1959 Rules) according to which vacancies

to the posts of Deputy Collector were to be filled from three sources 50% by nomination on the basis of the result of competitive examination; 25% by directly recruited Mamlatdars who have put in at least seven years' service including the period spent on probation and the remaining 25% by Mamlatdars promoted from the lower ranks in the revenue departments. The reservation of 25% in favour of directly recruited Mamlatdars was made by the second proviso of rule (1) of the Rules. On 7th April, 1961 the Government laid down the principles for regulating the preparation and revision of select list of Mamlatdars/Tahsildars fit to be appointed. It was held by this Court by a bench of five

893

learned judges that the second proviso to rule (1) of the 1959 Rules was void as being violative of Article 16 of the Constitution. This Court was of the view that the procedure for promotion to the cadre of Deputy Collectors followed by the State Government was also invalid on the ground that it denied equality of opportunity of promotion and was therefore hit by Article 16 of the Constitution and hence the Government resolution dated 7th April, 1961 was quashed.

What was done in the aforesaid case was to have an integrated service of Mamlatdars for the purpose of promotions to Deputy Collectors' grade which was admittedly a State-wise grade and that promotion was on the basis of merit-cum-seniority. It was found that select list based on merit and seniority Division-wise for promotion to higher grade, viz. that of the Deputy Collector and these lists were liable to be varied from time to time on periodical assessment of merits of the incumbents in that list, and this Court was of the view that it might lead to injustice in that if promotions were made from these lists Division-wise there was a possibility of a less meritorious candidate with lesser seniority being promoted in preference to a more meritorious candidate elsewhere. In the instant appeal it is necessary to consider the question of promotions from the Centre-wise cadre to an All India Cadre and not a State cadre. If, therefore, any analogy or parallel has to be sought, then it must be from the All India cadre of the Government of India service. It may be noted that in an All India Service considerations other than merit or seniority have to be taken into account. In the appellant Bank, the procedure is to give a qualifying test just to ascertain the fitness for upgradation. In effect upgradation is really done on the basis of seniority alone subject to fitness. In Deodhar's case, the emphasis was rather on merit rating and the discrimination was implicit against more meritorious candidates with higher seniority. But in the instant case the appellant Bank is an undertaking which comes within the Industrial Disputes Act, 1947 and the Class III employees are fully covered by the definition of the term "workman" in section 2(s) of the said Act and one of the principles normally applicable in fixing their terms and conditions of service is the Industry cum region principle. It was stated by this Court in Hindustan Antibiotics v. Workmen, [1967] 1 S.C.R. 652 that those principles should also be

894

applied to State-run industries. The question whether the recruitment to the lowest cadre of officers viz. Class A officers should be essentially from Class III employees by promotion directly came up for consideration by this Court in All-India Reserve Bank Employees' Association v. Reserve Bank of India, [1966] 1 S.C.R. 25 and this Court held that a workman can raise a dispute on such a point. It was in that context that a dispute was in fact raised and a settlement

under section 18(1) of the Industrial Disputes Act, 1947 was entered into with the recognised union namely All India Bank Employees Association on 7th May, 1972, and the Administration Circular AC-9 and AC-8 dated 13th May, 1972 issued.

The High Court in the impugned judgment proceeded on the basis that in fact the Class III employees of the Reserve Bank of India belonged to an All India Cadre freely transferable from one place to another. This aspect will be dealt with later on.

The division bench of the Bombay High Court in the decision under appeal found that the ratio of the said decision in Deodhar's case applied to the facts and circumstances of the instant case because the cadre of clerk (Grade II) was all India cadre and not a local cadre and secondly the post of Staff Officer (Group A) was a transferable one even in practice was a common point. Examination was also held on All-India basis. Therefore, the High Court was of the view that even if it was held that the petitioner's post was not of All India cadre, it would make no difference for applicability of the principle laid down by this Court in Deodhar's case (supra).

Promotion was included in the ambit of equality of employment or appointment under article 16 of the Constitution, according to the Bombay High Court. The Bombay High Court noted that there were very junior officers like respondents 4 and 5 before the Bombay High Court who had been posted then at Bhopal office. The petitioners before the Bombay High Court were otherwise qualified and confirmed employees having 15 years service to their credit and yet they did not get the chance to appear in examination as employees and some respondents got their chances even though they were appointees of 1980 and were not even confirmed.

The

895

respondents 4 and 5 before the Bombay High Court were given the benefit not on the basis of comparative merit but only on the basis, according to the Bombay High Court, of fortuitous event that there had been vacancies in Bhopal office. Therefore, the basis on which the scheme provided was promotion according to the vacancies in the zonal offices. This circumstance of anticipated vacancies in the zonal offices has no nexus, according to the Bombay High Court, to the merit-cum-seniority aspect. The Bombay High Court also could not sustain the contention urged on behalf of the appellant before us that the scheme was contractual and therefore was binding on the petitioners. It was submitted that the petitioners before the Bombay High Court and the three respondents before us were not members of the union and were not parties to the agreement mentioned before. Moreover, according to the High Court, by agreement one could not give up one's right. It was contended before the High Court that the validity of the scheme had been upheld by the decision of this Court in the case of Reserve Bank of India v. N.C. Paliwal & Ors., (supra) where one part of the scheme came up for scrutiny, but according to the High Court as this point was not the subject matter of scrutiny, the said decision did not affect the position.

The main grounds on which the High court of Bombay set aside the impugned portion of the circular which has been set out hereinbefore was the position that the presumption that the staff from which the promotion was made namely Class III employees, clerical and non-clerical belonged to an All-India cadre and that promotion on the basis of centre-wise seniority was opposed to the decision of this

Court in the case of R.S. Deodhar (supra).

The three petitioners in the court below namely Shri C.N. Sahasranaman, Shri R. Raman and Shri S.D. Peshkar who were the three staff members in the employment of the appellant Reserve Bank of India are respondents to this appeal. Intervention has been permitted by the Court during the course of the proceedings by the All India Reserve Bank Employees' Association, the recognised union who represented the majority of the workmen, and the All India Reserve Bank Workers Organisation who represented the minority of the workers both of whom have been made party-respondents. The

896 other interveners are All-India Reserve Bank Employees Federation at Hyderabad and All-India Reserve Bank Staff Association. The majority recognised union as well as the last mentioned union are supporting the stand taken by the appellant bank.

In order to appreciate the controversy in this case, it was highlighted before us that since the inception of the bank, separate department-wise and group-wise seniority for promotion to the cadre of officers and non-officers were maintained by the bank.

In 1972, following with recognised union, a combined seniority list was maintained as a result of the settlement and the two circulars A.C. Nos. 8 and 9 both dated 13th May, 1972. These are two annexures being Annexures 'A' and 'B' to the special leave petition to this Court which are in the Paper Book of this appeal. Annexure 'A' deals with the scheme for combined seniority list and switchover from non-clerical to clerical cadre. It is not necessary to set out in extenso the detailed scheme. In this scheme all employees in Class III non-clerical cadre substantively in the categories that have been listed as groups I, III, IV and V in the annexure who were graduates or had passed both parts of Institute of Bankers Examination would be eligible to exercise an option in accordance with sub-clause (a) or (b) of clause 2 to be transferred, automatically and without any screening, to posts in the clerical cadre and also to vacant and other posts than purely stop gap or short term nature, subject to sub-clause (b) mentioned in the scheme. Combined seniority scheme introduced by the Reserve Bank to equalise opportunity of confirmation and promotion of class under the optee scheme came up for consideration by this Court in Reserve Bank of India v. N.C. Paliwal & Ors., (supra). There the Court noted that at every centre of the Reserve Bank of India, there were five departments, the General Department and four Specialised Departments. There was a separate seniority list for the employees in each Department at each centre and confirmation and promotion of employees was only in the vacancies arising within their Department at each centre. There were two grades of clerks in each Department, namely, Grade I and Grade II. The pay scales of Grade I and Grade II clerks in all the

897 departments were the same and their conditions of service were also identical. There was automatic promotion from Grade II to Grade I. It is not necessary to set out in details the consequences. But it may be mentioned that this optee scheme gave rise to dissatisfaction amongst the employees in the General Department and they claimed equal opportunities for having combined seniority but justified a separate seniority list on the ground that work in each Department was of a special nature and their interchangeability was undesirable and hard to achieve. As a result of the recommendations of the National Tribunal,

however, the Reserve Bank introduced the optee scheme 1965 as a first step towards equalisation of opportunity. Under the scheme, the option to go over to the specialised Department was confined to confirmed Grade II clerks and officiating Grade I class in the general department. If he exercised option, he was eligible to be selected. If he was selected, he would be entitled to be absorbed only as Grade II clerk in one of the specialised departments with the result that if he was an officiating Grade I in the General Department at the time of the exercise of the option, he would lose the benefit of officiation in Grade I in the general department as also the monetary benefit of Rs. 15. His seniority in the cadre of Grade II clerks in the specialised department in which he was absorbed would be determined on the basis of his length of service calculated from the date of his recruitment if he was a graduate when he joined service, or from the date of his graduation if he became a graduate whilst in service.

The petitioners in that case and some others were, at the time of introduction of the Optee Scheme, confirmed Grade II clerks in the general department and some of them were officiating in the general department as Grade I clerks. They exercised the option under the Optee Scheme and were absorbed substantively as confirmed Grade II clerks in one or the other of the specialised departments. The clerks, other than the petitioners were, in due course, in order of seniority, promoted as officiating Grade I clerks in their respective specialised departments. But before the turn of the petitioners for promotion came, a new Scheme was introduced on 13th May, 1972 as a result of continuous agitation by the employees for full equalisation of opportunities between the general department and the specialised departments. The

898

scheme was known as the Combined Seniority Scheme, and it superseded the Optee Scheme. It consisted of two parts as mentioned hereinbefore. One part provided for the integration of the clerical staff of the General Department with the clerical staff of the Specialised Departments, this is annexure 'A' of the present Paper Book and the other which is annexure 'B' in the present Paper Book for the integration of the non-clerical staff with the clerical staff in all the Departments. The Combined Seniority Scheme gave an option to the non-clerical employees to be transferred to posts in the clerical cadre, but in the interest of efficiency, prescribed a qualification that only those employees in non-clerical cadre would be transferred who were either graduates or had passed both parts of Institute of Bankers' Examination. For determining their seniority vis-a-vis those in the clerical cadre, the Combined Seniority Scheme adopted the rule that 1/3 of their total non-clerical service until 7th May, 1972 (the date on which agreement was reached at between the Bank and its employees on the terms of the Combined Seniority Scheme) or the date of acquiring the qualification should be taken into account.

Allowing the appeal from the High Court and upholding the validity of the Combined Seniority Scheme, this Court held that assuming that the Reserve Bank was State under article 12 of the Constitution and therefore, subject to articles 14 and 16 of the Constitution, by the mere introduction of the Optee Scheme, no promise or assurance could be spelt out on the part of the Bank not to take any steps towards integration of other employees not covered by the Optee Scheme. The Reserve Bank, could not, on any

principle of law or by any process of implication, be held bound to hold its hands in the matter of further integration, until the petitioners were promoted in the Specialised Departments. The only object of the Optee Scheme was to equalise the promotional opportunities of Grade II clerks in the General Department with those of Grade II clerks in the Specialised Departments by giving an option to the former to be absorbed in the latter. The object was carried out as soon as the petitioners and other Grade II clerks in the General Department opted to be transferred to the Specialised Departments. Then they became Grade II clerks in the specialised departments having the same promotional opportunities as the original Grade II clerks in the

899

specialised departments. There was no assurance given by the Bank that the promotional opportunities available to Grade II clerks in the Specialised Departments would not be diminished. This Court in the said decision was of the view that the Combined Seniority Scheme did not affect the promotional opportunities of all Grade II clerks in the Specialised Departments, irrespective of whether they were original or transferee Grade II clerks. It did not discriminate between transferee Grade II clerks and original Grade II clerks. There was no breach of the principle that the promotional opportunities of transferee Grade II clerks should be equal to those of original Grade II clerks. The fact that some of the Grade II clerks, junior to the petitioners, had become Grade I clerks in the general departments, and so could be equated only with Grade I clerks in the specialised departments was a wholly fortuitous result, according to this Court. This Court noted that it might cause heart-burning amongst the petitioners that they were still continuing to be Grade II clerks but whenever services were integrated, some hardship was bound to result as a necessary consequence of integration. This Court further held that Reserve Bank did not undertake that it would not take any steps for bringing about total integration of the clerical services until all the transferee Grade II clerks were promoted. The Bank was entitled to introduce the Combined Seniority Scheme at any time it thought fit and its validity could not be assailed on the ground that it was introduced at a time when some of the transferee Grade II clerks still remained to be promoted and so was discriminatory against them. The fact that some transferee Grade II clerks had already obtained promotion as Grade I clerks in the Specialised Departments by the time the Cabinet Seniority Scheme was introduced, was all part of the exigencies of service and in law no grievance could be made against it.

The integration of different cadres into one cadre could not be said to involve any violation of the equality clause, according to this Court. Therefore, the first part of the scheme for combination stands affirmed by this Court in N.C. Paliwal's case (supra).

It may be mentioned that it is the case of the Bank that the settlement and the circulars namely Circulars Nos. 8 and 9 referred to hereinbefore both dated 13th July, 1973 were the

900

culmination of a long process of negotiation and assessment by the bank. Reference was made to the observations in the Award of the National Tribunal presided over by Justice K.T. Desai. Indeed, this court referred to the said decision of Justice K.T. Desai at page 382 and quoted from the said

report. Justice Desai had observed that it was desirable when it was possible, without detriment to the Bank and without affecting the efficiency, to group employees in a particular category serving in different departments at one Centre together for the purpose of being considered for promotion that a common seniority list of such employees should be maintained. The same would result in opening up equal avenues of promotion for a large number of employees and there would be lesser sense of frustration and greater peace of mind among the employees. These observations of the National Tribunal were also approved by this Court in All India Bank Employees Association v. Reserve Bank of India, [1966] 1 S.C.R. 25 at 57.

In Reserve Bank of India v. N.C. Paliwal & Ors., (supra), at page 385 of the report, it was observed, inter alia, as follows :

"The Association continued to agitate for acceptance of its demand and ultimately, as a result of negotiations, an agreement dated 7th May, 1972 was arrived at between the Reserve Bank and the Association by which the demand of the Association was substantially conceded and the principle of a combined seniority list was accepted by the Reserve Bank. The petitioners and some other employees were, however, not members of the Association and they refused to accept the terms of this agreement and hence the Reserve Bank issued a Circular dated 13th May, 1972 introducing a Scheme for combined seniority list and switched over from non-clerical to clerical cadre with effect from 7th May, 1972. This Scheme was substantially in the same terms as the agreement dated 7th May, 1972 and we shall hereafter, for the sake of convenience, refer to this Scheme as the Combined Seniority Scheme.

901

It may be mentioned as was placed before us that before a combined list at the centre was introduced, the provision was based on department-wise seniority at each centre and the working of the Reserve Bank department-wise had been explained in the Paliwal's case by this Court at pages 380 and 381 of the report. It may be mentioned that the Circular AC-9 dated 13th May, 1972 which was issued as mentioned before following the statutory settlement dated the 7th May, 1972 under section 18(1) of the Industrial Disputes Act, 1947 was upheld in Paliwal's case at page 380-382. This Circular was not challenged before the Bombay High Court. The resulting position is that the centre-wise seniority is the established position and whatever promotions have to be effected must be based on the centre-wise seniority, according to the appellant. The other part of the Circular i.e. Circular AC-8 dated 13th May, 1972 only laid down certain procedural aspects of promotion from clerical to non-clerical (Officer cadre) and even if any part of Circular AC-8 was set aside, it would not substantially affect the stand of the appellant Bank that the promotions are and would be made on the basis of combined seniority. It is the case of the Bank that the principle of centre-wise seniority was evolved after considerable discussion and debate with all the concerned interests, viz. who were represented by the recognised union, i.e., the All-India Reserve Bank Employees' Association and all the view points, according to the Bank, were considered by the National Tribunal and this Court had, as mentioned hereinbefore, in the two decisions on two different occasions, upheld the

validity of the combined seniority scheme; namely All India Reserve Bank Employees' Association v. Reserve Bank of India, at page 57 and Reserve Bank of India v. N.C. Paliwal, (supra) at pages 380-382.

Indeed in the last mentioned case at page 394, the validity of the combined seniority list has been subsequently upheld by this Court.

The controversy in this appeal lies within a narrow area but it has been urged against a vast compass and necessarily would require examination of some aspects which are strictly not germane to the present issue.

It has to be borne in mind as has been mentioned herein-

902

before that A.C. 9 dated 13th May, 1972 has received the acceptance and approval of this case in Paliwal's case and A.C. 9 and A.C. 8 form an integral part of the promotion and regulation of the employment of the staff.

It was further emphasised from the point of view of justice and fairness that for a large majority of employees of the Bank, the maintenance of centre-wise seniority was essential. If Class III clerical and non-clerical staff are treated as an All-India cadre, both the employees as well as the Bank would find themselves in a difficult position because the employees will render themselves to be freely transferable from one area to another and particularly for those employees who are being transferred outside Bombay, Calcutta and Delhi, may find it extremely difficult, according to the Bank, to get housing accommodation (as the Bank would not be in a position to offer housing accommodation to all its employees). In such a situation, it was submitted, it would become a problem of discipline for enforcement of transfer made if the same is refused by the employees. It was, therefore, in those circumstances that taking a pragmatic view the Bank had so far not insisted on establishing an All-India cadre as far as the non-officer staff was concerned. To add to the problem of accommodation, there would be the problem of children's education at the new centres. The integration of various centre-wise grades into one All-India grade would also pose considerable administrative problems.

In V.T. Khanzode v. Reserve Bank of India, (supra), it was noted that the private interest of employees of public undertakings should not override public interest and an effort had to be made to harmonize the two considerations. No scheme governing service matters could be foolproof and some section or the other of employees was bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fide will, of course, render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee was no evidence of these. It was further observed that the contentions of variations of the service rules had to be judged in the light of the historical data governing the constitution and Management of the Services under Reserve Bank of India from time to time. Without an

903

awareness of the history leading to the events which the petitioners have challenged as unconstitutional, it would not be possible either to appreciate the position or to provide an answer to it. These observations were made in connection with the evaluation of integrated seniority list for the officers Grade B and above.

In Kamal Kanti Dutt & Ors. v. Union of India & Ors.,

[1980] 3 S.C.R. 811, at pages 841-842 this Court emphasised that in matters like formulation of seniority list where, in respect of the rules of promotion, more than one view was possible and that a choice had to be necessarily conditioned by several considerations ensuring justice to as many as possible and injustice to as few, it was not safe to test the constitutionality of service rule on the touch stone of fortunes of individuals.

This Court had also observed that the right of promotion should not be confused with mere chance of promotion. Though the right to be considered for promotion was a condition of service, mere chances of promotion were not. See Mohd. Shujat Ali v. Union of India, [1975] 1 S.C.R. 449. See also in this connection the observations in R.S. Deodhar v. State of Maharashtra, (supra) at p. 230 and Reserve Bank of India v. C.T. Dighe, [1982] 1 S.C.R. 107 at 121-122.

It is apparent, therefore, that the chances of promotion in some areas occur more often in smaller centres than in other bigger centres like Bombay, Calcutta, Delhi but that is fortuitous and would not really affect the question, and violate articles 14 and 16 of the Constitution. The justice of the case should be judged in conjunction with other factors, the convenience, the future of the family etc.

The High Court proceeded, inter alia, on the basis that the fact that Class III employees of the Bank belonged to an All-India cadre freely transferable from one place to another.

Regulation 31 of the Reserve Bank of India (Staff) Regulations, 1948 which is in Chapter IV namely; Conduct, Discipline and Appeals, is as follows :

"Unless in any case it be otherwise distinctly

904

provided, the whole time of an employee shall be at the disposal of the Bank, and he shall serve the Bank in its business in such capacity and at such place as he may from time to time be directed."

Regulation 31 as indicated is subject to the condition that 'unless in any case it be otherwise distinctly provided'. In the instant case, it has been distinctly provided in the appointment letters as to where the Class III employees of the Bank are liable to serve. See for instance, the specimen copy at page 107 of the Paper Book which clearly, inter alia, provides as follows :

"He/She is liable to be posted either as Coin-Note Examiner Gr.II or as Clerk Gr.II in any of the department of the Bank at Bombay (Fort) or Byculla Offices."

All appointment letters issued to all staff members appointed in Class III and below ever since the inception of the Bank contained, according to the Bank, identical or similar provision specifying the offices in which of the Bank these employees are required to work. It appears, therefore, there was definite provision contrary to as contemplated by Regulation 31 of the Reserve Bank of India, (Staff) Regulation 1948 and therefore the general provisions of Regulation 31 would not have any application. In contrast, the appointment letters issued to the officers had always invoked general provisions of Regulation 31 giving full power to the management of the Bank to post or transfer the officers in any office situated in India. For this purpose, specimen appointment letter to an officer in Grade A may be referred to. See in this connection pages 98 to 108

of the paper book wherein it is stated in (xi) as follows:

"Posting and liability for transfer:

You are liable to be posted in any of the offices of the Bank and to work in any of its departments or the departments/offices of its associate institutions as the Bank may decide. You will also be liable for transfer to any place in India as the Bank may decide from time to time without payment of any allowance other than travelling allowance."

905

It was further submitted and it appears that there is good deal of substance in this that if an All-India cadre is enforced in respect of Class III employees, it would result in injustice to all the employees in that class at the smaller centres for a considerably long period of time leading to industrial unrest. The result of applying the principles of an All-India cadre for this class of employees would be that the senior-most in that whole cadre All-India-wise would alone have to be considered for promotion. In such a case, for a considerable long time, only employees of the older offices, namely, Bombay, Nagpur, Madras, Calcutta and Delhi will have to be considered, they being by far senior-most among the All-India employees and such a consideration and empanelling would continue for a very long time as the principal basis of the settlement was not one of promotion on merit but rather an upgradation on mere seniority, the only qualification being an examination to determine fitness. Once fitness was determined by the examination, the ranking in that examination did not come into play thereafter and the successful candidates were again listed according to centre-wise seniority in the matter of upgradation and promoted as and when vacancies at that centre occur. It was submitted that the recruitment of Class III employees at the lowest grade was made centre-wise by the Managers of the offices concerned and not from one source at the centre as such recruitment would be administratively not feasible, to be undertaken.

It has to be borne in mind in deciding the controversy in this case that in the course of this litigation on or about 20th October, 1982, this Court by an order suggested the appellant Bank that it might frame a new scheme for promotion, removing as far as possible any imbalances that might be existing in the prevailing scheme. The appellant Bank, thereafter, made certain suggestions which were not acceptable to all the unions and more particularly to the recognised union. In the circumstances, the Bank could not proceed with the suggested scheme.

Thereafter, the officers of the appellant Bank held discussions with the representatives of the recognised union viz., the All-India Reserve Bank Employees' Association, and further modified the scheme agreed to under the settlement dated 7th May, 1972.

906

As a result of the discussion with the employees of the Bank, certain decisions were taken regarding the principles governing recruitment and promotion for staff officers Grade A. There are in the affidavit affirmed on 22nd February, 1983 by Shri Pradeep Madhav Joshi, the Joint Chief Officer in the Personnel Policy Department of the Reserve Bank of India along with the letter dated 21st February, 1983.

It was stated therein that the principles governing recruitment and promotion for Staff Officer Grade A evolved in 1972 be, subject to the approval of this Court, modified on the following terms; "(i) 10% of the vacancies of Staff

Officers Grade A. will be filled in exclusively by direct recruitment. However, such of the members of the staff who comply with the eligibility requirements as might be prescribed from time to time for direct recruitment, subject to relaxation in respect of age requirement as the Bank may decide, will be eligible to compete in the selection test.

(ii) Of the remaining 90% of the vacancies, 75% thereof will be filled in on the basis of a written examination i.e. qualifying test in accordance with the scheme for promotions: Staff Officers Grade A annexed to Administrative Circular No.8 dated 13th many, 1972 subject to the conditions that no employee will be admitted to the qualifying test at any centre unless he has put in a minimum qualifying period of service of three years in clerical grade as on a notified dated.

(iii) The residuary portion, i.e. 35% of the 90% of the vacancies or in other words 22-1/2% of the total vacancies to the post of Staff Officers Grade A would be filled in on the basis of an All-India Merit Test to be prescribed by the Bank in consultation with the Reserve Bank of India Services Board ordinarily, and employee who had put in a minimum of 9 years' service in Class II would be eligible to take the test. If, however, sufficient number of employees with 9 years' service were not available at any point of time, the Bank might suitably reduce the conditions of qualifying service so that candidate to the extent of at least thrice the number of vacancies are available for the test. Notwithstanding such reduction in qualifying service necessitated in the circumstances indicated, in the case of non-clerical staff who are non-graduates, they would, however, be eligible for taking the

907
test only on completion of 9 years service. Successful candidates would be empanelled in the central panel in order of their comparative merits and they would be considered for posting in order of their position in the central panel as, when and where, the vacancies to posts of Staff Officer Grade A in any of the offices of the Bank might arise."

The appellant Bank addressed a letter to the Association incorporating the aforesaid decision of the appellant Bank on the modification of principles governing recruitment and promotion for Staff Officer Grade A and the Association has, by its letter confirmed the same.

It was submitted on behalf of the Bank that the modified scheme envisages appointment of a candidate for the post of Staff Officer Grade A through holding three different test, viz. (i) qualifying test on the basis of centre-wise seniority and estimation of vacancies of Staff Officers Grade A for each centre, (ii) merit test for all employees with a minimum length of service of 9 years on all-India basis. Successful candidates who will be empanelled in the central panel in order of their comparative merits would be considered for posting in order of their position in the central panel, as, when and where the vacancies to the post of Staff Officers Grade A in any of the offices of the Bank might arise; and (iii) Selection test for direct recruitment of candidates for Staff Officer Grade A for inducting fresh blood for Staff Officer Grade A which is the base level of officer and first level of supervisory cadre. It was submitted on behalf of the Bank that the modified scheme achieved just balance keeping in view the interest of the employees as a class i.e. both of senior and experienced employees and junior and qualified employees on the one hand and the interests of the Bank on the other. It was further stated that earlier, 82-1/2% of

the vacancies were allotted to be filled on the centre-wise basis. Under the modified Scheme, the percentage was brought down to 67-1/2. It was necessary to make gradual change as the total change in the existing procedure would have created industrial unrest and would have led to other imbalances in operation.

Further it was submitted that the modified scheme provided that no employee would be admitted to the qualifying test at any centre unless he has put in a minimum qualifying

908

period of service of three years in clerical cadre as on a notified date. It was submitted on behalf of the Bank that one of the factors that influenced the High Court in the judgment under appeal was that raw junior employees from Bhopal Office were eligible to appear for the qualifying test, as apparent from the decision under appeal. It was submitted that with the modification, no employee who had put in less than three years of service would be admitted to the qualifying test and the grievance that even temporary and junior employees would become eligible would no longer survive.

The correctness or otherwise of the decision of the Bombay High Court in the light of the modified scheme has to be judged from various angles.

On behalf of the opposing respondent, Shri C.N. Sahasranaman made his submissions orally in person. He submitted that at pages 296 to 299, 306, 307 and 310 of the Paper Book, the appellant had admitted that the impugned scheme of promotions had led to serious imbalances in opportunities for appearing at the examinations. With this admission, it was urged by respondents appearing in person that the question of law raised by them in their affidavit have been concluded by themselves and therefore they could not have any grievances whatsoever against the impugned judgment of the Bombay High Court. It was submitted that matters relating to the imbalances contained by the impugned Circular No.8 had already been considered at length by this Court and this Court had directed on 20th October, 1982 to formulate a new policy removing the imbalances in the impugned policy.

It was submitted by the opposing respondents that equality right of Class III employees which was an All-India Institution would be affected even in the modified scheme suggested by the Bank. It was urged that it would be destructive of the All-India stature of the Reserve Bank of India.

The main grievance of the respondents was that there was violation of the constitutional right and it will hamper development of an All-India Institution and All-India cadre.

Regarding reference to the case of N.C. Paliwal, it was submitted on behalf of the opposing respondents that this

909

Court had not struck down the impugned circular on the ground that it did not ensure equality of chances of promotion but on the ground that the scheme did not ensure equality of opportunity to be considered for promotion. The equality of chances of promotion and the equality to be considered for promotion, according to the respondents, are two different questions and the grievance of the respondents was that there was denial of equality to be considered for promotion.

Whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people

are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the scheme as evolved by the Bank as modified as it would be apparent from the submissions urged on behalf of All-India Reserve Bank Employees' Association impleaded as party-respondent in this appeal as well as All India Reserve Bank Employees' Federation, Hyderabad. It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touch-stone. See in this connection the observations of this Court in Kamal Kanti Dutt & Ors. v. Union of India and Ors., (supra).

Furthermore it appears to us that Circular No.9 is a counterpart of Circular No.8. Circular No. 8 having been held valid, Circular No. 9 must also follow to be good. Circular No. 8 cannot stand in vacuum and in isolation. It is a step to the fulfilment of the object to be achieved by Circular No. 9. Viewed in that point of view and as a feasibility and having regard to the factors and in regard to the history of Reserve Bank employees, we are of the opinion that the scheme as modified by the Bank and as accepted by vast majority of their employees is a proper and just scheme and does not suffer from the vice of article 14 or article 16 or any other constitutional guarantees.

It is well to bear in mind the fact that settlement of disputes by direct negotiations or settlement through

910
collective bargaining is always to be preferred for it is best suited for industrial peace which the aim of legislation for settlement of labour disputes. See the observations in New Standard Engineering Co. Ltd. v. N.L. Abhyankar and Ors., A.I.R. 1978 S.C. 982 at 984 = [1978] 2 S.C.R. 798. This view has again been reiterated by this Court in Tata Engineering & Locomotive v. Their Workmen, A.I.R. 1981 S.C. 2163 = [1982] 1 S.C.R. 929. The order of this Court dated 2nd May, 1984 and the referendum and the result thereof have been set out hereinbefore.

We may, however, note that about the proper manner of holding this referendum, certain doubts were expressed at the time of hearing of this appeal. The Referendum undoubtedly indicates that majority of the employees are in favour of acceptance of the modified settlement. In matters of service conditions, it is difficult to evolve an ideal set of norms governing various conditions of services and in grey area where service rules operated, if more than one view is possible without sacrificing either reasons or common-sense, the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few. See in this connection the observations in K.K. Dutta v. Union of India (supra) at page 841. These principles, however significant, do not authorise the majority of the employees to trample upon the constitutional guarantees or rights of the individual or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger. But in judging the content of the constitutional rights, the entire perspective of the equality of opportunity here and denial of equal right in public employment have to be viewed in a fair, reasonable and just perspective. Viewed in that light, it is true, there may be individual instances exemplifying injustice by postponing or delaying the chances

of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in the light of the other considerations mentioned hereinbefore, we must observe that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might result but the

911

paramount consideration is the reconciliation of the conflicting claims of two important constituents of service one which brings fresh clerical employees and the other mature experience. There has been a happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed rights of the opposing respondents have occurred.

It has further to be borne in mind that the promotion scheme having been evolved after careful consideration and having been in operation ever since the inception of the Bank with modification from time to time as a result of the negotiations under the Industrial Disputes Act should not be modified drastically. In such matters one should hasten slowly.

In the premises we affirm the scheme as modified by the second modification referred to hereinbefore in the letter dated 21st February, 1983 and as explained in the affidavit of Pradeep Madhav Joshi filed on 22nd February, - 1983. We further direct that the adhoc promotions made under the directions of this Court in terms of the Order dated 22nd May, 1984 be regularised. The opposing respondents have appeared in person and have made submissions. They have made valuable contributions. The constitutionality of a scheme or if there is a violation of a right can only be decided if it is questioned.

In that view of the matter the opposing respondents should be amply compensated. We award cost of Rs. 5000 jointly to them or if they are appearing singly then singly. Amounts already paid by the Bank should be adjusted against the amount to be paid. If more amounts than Rs. 5000 have already been paid then nothing need be refunded or paid. The decision of the Bombay High Court is set aside. The appeal is allowed and the order of the Bombay High Court substituted by the order mentioned hereinbefore.

Civil Misc. Petition No. 14834 of 1985 - application for intervention and Civil Misc. Petition No. 14822 of 1985 application for impleading are allowed and are disposed of along with the above order.

S.R.

Appeal allowed.

912