RESERVE BANK OF INDIA, BOMBAY

v.

C.T. DIGHE AND OTHERS

July 27, 1981

[A.C. GUPTA, R.S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

Labour dispute—Changes made by the employer in the existing scheme of promotion during the pendency of a reference before the Tribunal—Whether such a change contravened the provisions of section 33 (1) (a) of the Industrial Disputes Act, 1947 giving rise to complaint will depend on the nexus of the changes made and the nature of the reference pending before the Tribunal.

On May 13, 1972 the Reserve Bank of India, Bombay issued Administration Circular No. 8 introducing a revised scheme for promotion of employees as staff officers Grade A. Feeling that the aforesaid Circular adversely affected them, the stenographers filed a writ petition in the Andhra Pradesh High Court challenging its validity, Their grievance was that by the said circular No. 8 they were placed *en-bloc* below the clerks which made their chances of promotion illusory. On March 5, 1973 the Andhra Pradesh High Court dismissed the writ petition, but made certain recommendations to avoid frustration and dissatisfaction among the stenographers. In 1973 charters of demands were submitted to the Reserve Bank of India by the employees' associations. On January 23, 1976 the Bank issued Administration Circular No. 5 modifying Circular No. 8 to remedy the alleged adverse effect suffered by stenographers as a result of Circular No. 8.

On June 16, 1979, the Central Government in exercise of powers conferred by section 7B of the Industrial Disputes Act, 1947 constituted a National Industrial Tribunal with head-quarters at Bombay and referred to it for adjudication an industrial dispute existing between the Reserve Bank of India and their Class-III workmen. The dispute as described in the Schedule to the order of reference related to "specific matters..... ....pertaining to Class-III workmen" enumerated in the Schedule. The Schedule listed 35 matters in all, item No. 12 of which is described as "promotion". During the pendency of the reference, on October 10, 1979 the Reserve Bank of India issued Administration Circular No. 6 introducing certain change in the scheme of promotion set out in circular No. 8 by relaxing certain conditions of eligibility for the personal assistants, stenographers, tellers and the clerical staff. Feeling aggrieved, some clerks (Grade I) who were empanelled for promotion to the post of Staff Officer Grade A after passing the test, filed two complaints before the National Tribunal under section 33A of the Industrial Dispute Act alleging (i) that as a result of Circular No. 6 many who could not have been considered for promotion in preference to the complainants had Circular No. 8 been in force, would now be entitled to a higher preference,

A and (ii) that the alterations made during the pendency of the reference before the National Tribunal amounted to changing their conditions of service to their prejudice in violation of section 33 (1) (a) of the Industrial Disputes Act inasmuch as their chances of promotion would recede. The National Tribunal by its award dated September 3, 1980 disposed of these two complaints holding that the Reserve Bank of India had changed to the prejudice of the complainants their conditions of service by modifying the existing scheme of promotion during B the pendency of a reference before the Tribunal and thereby contravened the provisions of section 33 (1) (a). Hence the appeals by special leave.

Allowing the appeals and dismissing the complaints, the Court

HELD : 1 : 1. The order of reference did not require the Tribunal to adjudicate on all possible matters relating to promotion. The Tribunal should have defined C the area of the dispute referred to it for adjudication before proceeding to consider whether the promotional scheme set out in Circular No. 6 could be said to be connected with that dispute. [117 G-H]

1 : 2. Item No. 12 of the Schedule annexed to the order of reference is described as "promotion". Demand No. 19 in the Charter of Demands presented by the All India Reserve Bank Employees Association mentions "promotional D avenues", but the matters specified under the head "promotional avenues" relate to the creation of more promotional posts and the upgrading of certain posts. Demand No. 19 does not thus relate to the promotional scheme in question. Demand No. 27 of the Charter of Demands submitted by the All India Reserve Bank Workers Organisation is described as "promotional policy" and all that is said in the charter of demands is that the matters "should be discussed and finalised on the basis of prerequisites of promotional policy submitted in 1969". E Demand No. 27 could, therefore, have no connection with the promotional scheme set out in Circular No. 6 issued in 1979. [116 C-E]

1 : 3. Under section 10 (1A) the Central Government could refer to the National Tribunal an existing or an apprehended dispute; the order or reference in this case shows that it was not an apprehended dispute but an industrial dispute that "exists between the employers in relation to the Reserve F Bank of India and their class III workmen in respect of the matters specified in the schedule" annexed to the order which was referred to the Tribunal for adjudication. As section 10 (1A) expressly says, any matter appearing to be connected or relevant to the existing or apprehended dispute can also be referred to the National Tribunal for adjudication, but obviously unless it is determined what the dispute was that has been referred for adjudication, it is not possible to say whether a particular matter is connected with it. [117 C-E]

G

2 : 1. What circular No. 6 did was to relax for stenographers and personal assistants the conditions they had to satisfy to be able to sit for the test. It they passed the test, they would get into the panel along with employees belonging to the clerical cadre who also had passed the test. Vacancies in the posts of staff officer Grade A are filled by recruiting employees from the panel. The panel is H a permanent one. Alterations of the conditions of the eligibility governing employees belonging to a particular cadre can amount to changing the conditions of service of employees who belonged another cadre, assuming for the present

that the said conditions were conditions of service. The changes introduced in respect of the stenographers and personal assistants may have an impact on the promotional prospects of employees from another cadre who are already in the panel or even of those who were expecting to be included in the panel, but this would not amount to changing their conditions of service. The conditions of service of an employee cannot include an implied right to prevent the employer from altering the conditions of service of other employees. In a given case such alteration may be inequitable, and a way may be found in the Industrial Disputes Act to redress the grievance of the employees affected thereby. [118 B-F]

2 : 2. It was competent for the Bank to introduce a combined promotional scheme for the clerical staff, stenographers, and personal assistants and the Bank was not bound to wait until all employees belonging to the clerical cadre whose names were already in the panel when Circular No. 6 was introduced had been promoted as staff officers Grade A. There was no such assurance given by the Bank when it introduced Circular No. 8. The Bank did not undertake that it would not take any step to change the conditions of the stenographers and the personal assistants were required to satisfy to be able to appear in the test until all the clerks already empanelled were promoted. Circular No. 6 cannot therefore be assailed on the ground that it was introduced when some employees belonging to the clerical grade whose names were already in the panel remained to be promoted. [121 B-E]

Being in the panel in any particular year does not ensure a fixed place in the panel for an employee until he is promoted. The right the complainants now claim is based on the change in the conditions of service of the stenographers made to their detriment earlier. [121 E-F]

Reserve Bank of India v. *N.C. Paliwal* [1977] 1 SCR 377, followed.

3. It is well settled that a rule which affects the promotion of a person relates to his condition of service but this is not so if what is affected is a chance of promotion only. Though a right to be considered for promotion is a condition of service, mere chances of promotion are not and that a rule which merely affects chances of promotion cannot be regarded as varying a condition of service. [121 G-H, 122 A, C-D]

The fact that as a result of the changes made by Circular No. 6 the complainants lost a few places in the panel affects their chances of promotion but not the right to be considered for promotion. That being so, it cannot be said that the alterations made by Circular No. 6 amount to changing the conditions of service of the complainants; the grievance made by the complainants does not therefore appear to have any basis. 122-G-H, 123 A-B]

Mohd. Shujat Ali and others etc. v. *Union of India & Ors. etc.*, [1975] 1 SCR 449; *State of Mysore* v. *G.B. Purohit*, C.A. 2281 of 1965 decided on 25-1-1967 (S.C.) unreported, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 2815 & 2816 of 1980.

A Appeals by special leave from the Award dated the 3rd September, 1980 of the National Industrial Tribunal at Bombay in Complaint No. NTB 2 and NTB 3 of 1980 arising out of Reference No. NTB 1 of 1979.

B WITH

CIVIL APPEAL NO. 2607 of 1980

Appeal by special leave from the Award dated the 3rd Sept. 1980 passed by the National Industrial Tribunal, Bombay in Complaints Nos. NTB 2 & 3 of 1980 in Reference No. NTB 1 of 1979.

C AND

CIVIL APPEAL NO. 3150 of 1980

Appeal by Special leave from the Award dated 3rd September, 1980 passed by the National Industrial Tribunal, Bombay in Com-
D plaints Nos. NTB 2 & 3 of 1980 in Reference No. NTB 1 of 1979.

F.S. Nariman R.A. Shroff, H.S. Parihar and *Shradul S. Shroff*, for the Appellant in CAS 2815-16/80, for Respondent No. 2 in CA. 2607/80 & for Respondent No. 1 in C.A. 3150/80.

E *C. N. Murthy* and *P. P. Mittal* for Respondent No. 1 in CA. 2815-16/80.

M.K. Ramamurthy, P.S. Khera and *S.K. Dawar*, for RR 2-70 in CAS. 2815-16/80, for Respondent No. 3 in CA 2607/80 & for Respondent Nos. 3 & 40-67 in CA. 3150/80.

F *K.K. Venugopal, C.N. Murthy* and *P.P. Mittal* 1980 for the Appellants.

A.K. Sen, A.K. Gupta, Brij Bhushan, N.P. Mahendra and *Miss Renu Gupta*, for the Appellants in CA. 3150/80.

G *S.K. Bisaria* for RR. 2-4 and 6-39 in CA. 3150/80.

The Judgment of the Court was delivered by

GUPTA, J. These are four appeals by special leave from an
H Award of the National Industrial Tribunal, Bombay, made on September 3, 1980 disposing of two complaints under section 33-A of the Industrial Disputes Act, 1947 holding that the employer,

Reserve Bank of India, Bombay had changed to the prejudice of the complainants their conditions of service by modifying the existing scheme of promotion during the pendency of a reference before the Tribunal and had thereby contravened the provisions of section 33 (1) (a) of the Act. Civil Appeals 2815 and 2816 of 1980 have been preferred by the Reserve Bank of India, Bombay. In civil appeal 2607 of 1980 the appellants are some of the stenographers employed in the Bombay office of the Reserve Bank of India. The four appellants in civil appeal 3150 of 1980 are also employees of the Reserve Bank of India, Bombay, one of whom is a clerk grade I and the other three are officiating as staff officers grade A. How the appellants in Civil Appeals 2607 and 3150 are affected by the Award will appear from the facts stated below.

The facts leading to the making of the complaints under section 33-A are as follows. On June 16, 1979 the Government of India, Ministry of Labour, in exercise of powers conferred by section 7B of the Industrial Disputes Act, 1947 constituted a National Industrial Tribunal with headquarters at Bombay and referred to it for adjudication an industrial dispute existing between the Reserve Bank of India and their class III workmen. The dispute as described in the schedule to the order of reference related to "specific matters... pertaining to class III workmen" enumerated in the schedule. The schedule listed 35 matters in all, item No. 12 of which is described as 'Promotion'.

On May 13, 1972 appellant Reserve Bank of India, Bombay, had issued Administration Circular No. 8 introducing a revised scheme for promotion of employees as Staff Officers Grade A. This Circular No. 8 prescribed as a condition for promotion passing a test consisting of three papers on the following subjects : noting, drafting, precis & essay writing, (ii) Reserve Bank of India Act, and (iii) functions and working of the Reserve Bank of India. Candidates with less than 15 years' service in class III cadre at the time of the test and who had not passed in the subjects 'Practice and Law of Banking' and 'Book-keeping and Accounts' in Part I of the Institute of Bankers Examination were to appear and pass in an extra paper divided into two parts on the aforesaid two subjects. Candidates who had passed in either or both these subjects in part I of the Institute of Bankers Examination were exempted from appearing in the corresponding part or both parts of this paper. The circular further provided that an estimate of the vacancies anticipated to occur in each office during a 'panel year' i. e. from September 1 to

August 31, was to be declared by the Bank in advance and the number of candidates in that office to be called for the test to fill the vacancies in that office was not to exceed twice the number of such vacancies. A candidate who had been unsuccessful in more than one test was to be treated as a repeater and the number of such repeaters sitting for a test would be in addition to the aforesaid number of candidates. An employee in the substantive rank of teller, stenographer grade II, stenographer grade I or personal assistant was eligible to appear in the test under this circular provided he had put in a minimum period of 15 years' service in class III cadre. A further condition relating to these three types of employees, tellers, stenographers and personal assistants, was that they could be called to appear in the test only if a clerical candidate of the same length of service found a place within twice the number in the combined seniority list. The said three types of employees were required to pass both parts I and II of the Institute of Bankers examination, or if they were graduates, in part I only. Those of them who would pass the test were to be posted on the clerical desk for one year for acquiring experience and thereafter they were to be absorbed in the next list to be prepared on the result of the test succeeding the one in which they had passed. They were to rank in seniority below the juniormost successful candidate in the test in which they qualified. A further requirement was that the stenographers and personal assistants should have worked for at least 5 years as such; this condition was thought necessary because it was possible that some of them may have been employed as typists for some time.

Feeling that the aforesaid circular No. 8 adversely affected them, the Stenographers filed a writ petition in the Andhra Pradesh High Court challenging the validity of the circular. The main grievance seems to have been that by the said Circular No. 8 they were placed *en bloc* below the clerks which made the chances of promotion so far as they were concerned illusory. The Andhra Pradesh High Court dismissed the writ petition with the following observations :

> ".....the clerks and the stenographers who have passed at the qualifying written examination do not acquire any right to promotion by merely being put in a panel. As observed by the Supreme Court in the case cited in *Gangaram* v. *Union of India*, A.I.R. 1970 S.C. 2178, the effect of passing at the qualifying examination is only

> to remove a hurdle in their way for further promotions to the posts of staff officers, grade II. In the matter of actual promotion there is nothing illegal in the department promoting the clerks as a group in the first instance and postponing the promotions of the stenographers to a later stage.....It is urged on behalf of the petitioners that previous to the new scheme, the stenographers were placed at the top of the clerks *en bloc* and that they have now been brought to the bottom.
>
> This argument is based upon a misconception that the panel creates any rights. Hence nothing turns upon the place fixed in the panel".

A B C

The High Court however made certain recommendations "to avoid frustration and dissatisfaction among the stenographers". It was suggested that "the Reserve Bank may frame suitable rules for fixing the seniority among the staff officers, grade II, on some rational and equitable principles, i.e., by length of service or marks obtained at the qualifying examination or by adopting a reasonable ratio between the two classes, so that the chances of further promotions for the stenographers may not be illusory". This judgment was delivered on March 5, 1973. In the months of March and November, 1973 charters of demand were submitted respectively by the All India Reserve Bank Workers Organisation and the All India Reserve Bank Employees Association. The latter Association is the one which is recognised by the Bank. On January 23, 1976 by Administration Circular No. 5 the Bank modified Circular No. 8 to remedy the alleged adverse effect suffered by the stenographers as a result of Circular No. 8. On June 16, 1979 the order referring to the National Tribunal at Bombay the dispute between the Bank and the class III workmen was made. The All India Reserve Bank Employees Association filed a writ petition in the Calcutta High Court in July 1979 challenging this order of reference. The High Court at Calcutta issued an injunction restraining the National Tribunal from adjudicating on the reference until the writ petition was disposed of. A settlement was thereafter reached between the Bank and the All India Reserve Bank Employees Association and the injunction was vacated. On November 21, 1979 the Bank and the Association applied to the Tribunal jointly for making an award on the basis of the settlement.

D E F G H

In the meantime on October, 10, 1979 the impugned Circular No. 6 was issued. The following changes were introduced by Circular

A No. 6 in the scheme of promotion set out in Circular No. 8 relating to personal assistants, stenographers, tellers and the clerical staff:

(1) The eligibility period so far as these three types are concerned was reduced from 15 years to 10 years service.

B

(2) The condition requiring stenographers and personal assistants to put in 5 years service as such was dispensed with.

(3) Their period of training on clerical desk was reduced C from 1 year to six months.

(4) They were to be fitted according to the length of their service in the panel for the year in which they passed the test and not in the next panel as before.

D

(5) Those who are graduates among these three groups, even if they had not passed in all the subjects in part I of Indian Institute of Bankers examination, would be eligible for exemption from appearing in the additional paper on 'Practice and Law of Banking' and 'Book-keeping and accounts' if they had passed E in these two subjects in the said examination.

(6) This benefit of exemption which was available to the clerical staff of 15 years' standing previously was extended to those of them who had put in only 10 years service. F

The two complaints (complaint Nos. 2 and 3 of 1980) on which the impugned award has been made were filed respectively on July 22, 1980 and August 1, 1980. The complainants who were clerks grade I had passed the test in the panel year 1978-79 and G were empanelled for promotion to the post of staff officer grade A. The grievance made in the two complaints is that the result of the changes introduced in the promotional scheme by Circular No. 6 relaxing for the stenographers and personal assistants the conditions they were required to satisfy to be able to sit for the test and permitting them to be fitted according to the length of their service H in the panel for the year in which they had passed the test, was that many who could not have been considered for promotion in preference to the complainants had circular No. 8 been in force, would

now be entitled to a higher preference. According to the complainants the alterations made during the pendency of the reference before the National Tribunal amounted to changing their conditions of service to their prejudice in violation of section 33 (1) (a) of the Industrial Disputes Act. The complainants in complaint No. 2 of 1980 stated that if the alterations introduced by Circular No. 6 were allowed to continue "the chances of promotion would become bleak for them' ; complainants in complaint No. 3 of 1980 also epxressed a similar apprehension that as a result of the changes introduced "their chances of promotion would recede further and further".

The appellants in civil appeal 2607 of 1980 who are stenographers acquired eligibility to appear in the qualifying test because of the modifications introduced in the existing scheme by Circular No. 6. All the four appellants in civil appeal 3150 of 1980 are from clerical cadre, three of whom are officiating as staff officers grade A; they are also beneficiaries of the relaxations made in the existing scheme by circular No. 6. The appellants in both these appeals are obviously affected by the Award allowing the complaints and declaring circular No. 6 as invalid.

Section 33 (1) (a) prohibits the employer during the pendency of a proceeding in respect of an industrial dispute before a Labour Court or Tribunal or National Tribunal from altering to the prejudice of the workmen concerned in the dispute their existing conditions of service. Sub-section (2) of section 33, however, permits the employer to alter the conditions of service in regard to any matter not connected with the dispute in accordance with the standing orders applicable to the workman concerned or in accordance with the terms of the contract between the employer and the workman. The right given to the employer under sub-section (2) is subject to the condition laid down in sub-section (3) of section 33 that the right can be exercised only with the express permission in writing of the authority before which the proceeding is pending. Section 33-A of the Act provides that where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention may make complaint in writing to such Labour Court, Tribunal or National Tribunal, and on receipt of such complaint the Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to it or pending before it in accordance with the provisions of the Act and submit its award to the appropriate government. Section 31 (1) of the Act provides for penalty for contravention of the provisions of section 33; an

A employer found guilty of such contravention is punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

In this case circular No. 6 was not introduced with the permission of the National Tribunal, Bombay, before which the reference B was pending; to determine whether thereby the provisions of section 33 have been contravened, the question that requires to be answered is whether the alterations introduced by Circular No. 6 are connected with the dispute pending in reference before the National Tribunal. This again leads to the question, what was the dispute that was G referred to the National Tribunal for adjudiction? According to the complainants their promotional prospects were adversely affected by the impugned circular. Item 12 of the schedule annexed to the order of reference is described as 'Promotion'. Demand No. 19 in the charter of demands presented by the All India Reserve Bank Employees Association mentions 'Promotional avenues' but, as the National Tribunal itself noticed, the matters specified under the head D 'promotional avenues' relate to the creation of more promotional posts and the upgrading of certain posts. Demand No. 19 does not thus relate to the promotional scheme in question. The impugned award also refers to demand No. 27 of the charter of demands submitted by the All India Reserve Bank Workers Organisation. Demand No. 27 is described as 'Promotional Policy' and all that is E said in the charter of demands under this head is that the matter "should be discussed and finalised on the basis of pre-requisites of promotional policy submitted in 1969". It is not therefore clear how demand No. 27 could have a connection with the promotional scheme set out in circular No. 6 issued in 1979. The award does not refer to the statements of claim filed on behalf of the workmen; F it is likely that because of the order of injunction issued by the Calcutta High Court to which we have earlier referred, the unions representing the workmen were not able to file their statements of claim before the National Tribunal disposed of the complaints under section 33A. The Tribunal however held: "Industrial Disputes G Act contemplates reference in wider terms than the actual item in dispute. Section 10 (1A) of the Industrial Disputes Act which provides for the appointment of the National Tribunal shows that the Central Government could form its opinion not only on the existing dispute but also on the apprehended dispute and the order H of reference can cover not only the dispute but any matter appearing to be connected with or relevant to the dispute. In view of it, it cannot be said that when the item 'Promotion' has been referred to

the Tribunal, it has the limitation of remaining in the frame work of the demand.....the Tribunal has the jurisdiction to decide on the natural meaning of the words used in the item of reference.....The item seems to have been deliberately stated in terms.....it looks to be referring to the process involving promotions." Having said so the Tribunal added: "The extent of such process will have to be carefully defined because there is no dispute with the axiomatic principle that promotion is a matter in the discretion of the employer".

It is difficult to follow the steps of reasoning in the extract from the award quoted above; it is also not clear how the view expressed therein helps in ascertaining what was the dispute referred to the Tribunal for adjudication. No one can deny that under section 10 (1A) the Central Government could refer to the National Tribunal an existing or an apprehended dispute; the order or reference in this case however shows that it was not an apprehended dispute but an industrial dispute that "exists between the employers in relation to the Reserve Bank of India and their class III workmen in respect of the matters specified in the schedule" annexed to the order which was referred to the Tribunal for adjudication. As section 10 (1A) expressely says, any matter appearing to be connected or relevant to the existing or apprehended dispute can also be referred to the National Tribunal for adjudication, but obviously unless it is determined what the dispute was that has been referred for adjucation, it is not possible to say whether a particular matter is connected with it. The Tribunal thought it unjust to restrict the meaning of the word 'promotion' to what was suggested by the charters of demand and decided to give it its "natural meaning" which according to the Tribunal includes "the process involving promotion". The question however remains how did the Tribunal satisfy itself that when by the order of reference a specific matter, namely, 'promotion' was referred to it for adjudication, it was implied that the word should be given a "natural meaning" in the sense in which the Tribunal understood it. We do not think it reasonable to suppose that the order of reference required the Tribunal to adjudicate on all possible matters relating to promotion. We therefore accept the contention of the appellants that the Tribunal should have defined the area of the dispute referred to it for adjudication before proceeding to consider whether the promotional scheme set out in Circular No. 6 could be said to be connected with that dispute.

Having reached this conclusion we should have sent the matter back to the National Tribunal for ascertaining the scope of the dispute referred to it for adjudication, if the assumption were correct that the alterations in the promotional scheme introduced by Circular No. 6 amounted to changing the conditions of service of the complainants; if not, remitting the matter to the Tribunal will be unnecessary. What Circular No. 6 did was to relax for stenographers and personal assistants the conditions they had to satisfy to be able to sit for the test. If they passed the test, they would get into the penal along with employees belonging to the clerical cadre who also had passed the test. Vacancies in the post of staff officer Grade A are filled by recruiting employees from the panel. The panel, it appears from the award, is a permanent one. How those who come out successful in the test are to be fitted in the panel has been stated earlier. The panel is made up of employees belonging to different cadres. It is difficult to see how alteration of the conditions of eligibility governing employees belonging to a particular cadre can amount to changing the conditions of service of employees who belonged to another cadre, assuming for the present that the said conditions were conditions of service. The changes introduced in respect of the stenographers and personal assistants may have an impact on the promotional prospects of employees from another cadre who are already in the panel or even of those who were expecting to be included in the panel, but it is not possible to agree that this would amount to changing their conditions of service. It is difficult to think of the conditions of service of an employee as including an implied right to prevent the employer from altering the conditions of service of other employees. In a given case such alteration may be inequitable, and a way may be found in the Industrial Disputes Act to redress the grievance of the employees affected thereby, but in this case the question is whether if amount to altering the condition of service of the complainants. In *Reserve Bank of India* v. *N.C. Paliwal* (1) this Court upheld the validity of the combined seniority scheme introduced by the Reserve Bank for the clerical staff. The first paragraph of the head note to the report summarizes the facts on which challenge to the scheme was based:

> "At every centre of the Reserve Bank of India there were five departments, the General Department and four Specialised Departments. There was a separate

(1) [1977] 1 S.C.R. 377.

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 departments were the same and their conditions of service were also identical. There was automatic promotion from Grade II to Grade I and when a clerk from Grade II was promoted to officiate in Grade I, he got an additional officiating allowance of Rs. 25/- per month. There were also several categories of non-clerical posts in the General as well as Specialised Departments, and their pay scale was the same as that of Grade II clerks. In view of expanding activities in the Specialised Departments, there were greater opportunities for confirmation and promotion for employees in the Specialised Departments than in the General Deparment. This gave rise to dissatisfaction amongst employees in the General Department and they claimed equal opportunities by having a combined seniority list for all the clerks for confirmation and promotion. The Reserve Bank, sought to justify the separate seniority lists on the ground that the work in each department was of a special nature and inter-transferability was undesirable and hard to achieve. As a result of the recommendation of the National Tribunal, however, the Reserve Bank introduced the Optee Scheme of 1965 as a first step towards equalization of opportunities. Under the scheme, the option to go over to the Specialised Departments was confined to confirmed Grade II clerks and officiating Grade I clerks in the General Department. If he exercised the 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 clerk 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. 25/-. His seniority in the cadre of Grade II clerks in the Specialised Department in which he was absorbed would be deter-

A mined 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."

B It was argued in *Paliwal's* case that the combined list was invalid because it discriminated against the petitioners vis-a-vis other grade II clerks who had opted under the Optee Scheme of 1965. This Court held :

> "The contention of the petitioners was that some of the Grade II clerks who had opted under the Optee C Scheme of 1965 were promoted as Grade I Clerks, while the petitioners continued as Grade II Clerks and before their turn for promotion could arrive, the Combined Seniority Scheme was brought into force and that prejudicially affected their promotional opportunities and thus brought about unjust discrimination D between persons belonging to the same class. This contention has no force and must be rejected. We have already discussed and shown that it was competent to the Reserve Bank to introduce the Combined Seniority Seheme for the purpose of integrating the clerical staff in all the departments and the E Reserve Bank was not bound to wait until all the transferee Grade II Clerks under the Optee Scheme of 1965 were promoted as Grade I Clerks in their respective Specialised Departments. There was no such assurance given by the Reserve Bank when it introduced the Optee Scheme of 1965. What it did was F merely to equalise the opportunities of Grade II Clerks in the General Departments with those of Grade II Clerks in the Specialised Departments. The Reserve Bank did not undertake that it will not take any steps for bringing about total integration of the Clerical G services until all the transferee Grade II Clerks were promoted. The Reserve Bank was entitled to introduce the Combined Seniority Scheme at any time it thought fit and the validity of the Combined Seniority Scheme cannot be assailed on the ground that it was introduced H at a time when some of the transferee Grade II Clerks still remained to be promoted and was discriminatory

> aginst them. It may be that some transferee Grade II Clerks had already obtained promotion as Grade I Clerks by the time the Combined Seniority Scheme was introduced, while others like the petitioners had not. But that cannot be helped. It is all part of the incidence of service and in law, no grievance can be made against it."

These observations in *Paliwal's case* are equally applicable to the case before us. It was competent for the Bank to introduce a combined promotional scheme for the clerical staff, stenographers, and personal assistants and the Bank was not bound to wait until all employees belonging to the clerical cadre whose names were already in the panel when circular No. 6 was introduced had been promoted as staff officers Grade A. There was no such assurance given by the Bank when it introduced circular No. 8 on which the complainants rely. The Bank did not undertake that it would not take any step to change the conditions the stenographers and the personal assistants were required to satisfy to be able to appear in the test until all the clerks already empanelled were promoted. Circular No. 6 cannot therefore be assailed on the ground that it was introduced when some employees beloging to the clerical grade whose names were already in the panel remained to be promoted. That cannot be helped, and, as observed in *Paliwal's* case, "it is all part of the incidence of service and in law no grievance can be made against it". Being in the panel in any particular year does not ensure a fixed place in the panel for an employee until he is promoted. It may be recalled that in 1964 and again by circular No. 8 in 1972 the stenographers conditions of service were altered to their prejudice. The right the complainants now claim is based on the change in the conditions of service of the stenographers made to their detriment earlier.

The grievance of the complainants really relates to the changes affecting their chances of promotion. We have earlier quoted from the charters of demand to show that the complainants themselves looked upon the alterations made by circular No. 6 as affecting their "chances of promotion". It is well settled that a rule which affects the promotion of a person relates to his condition of service but this is not so if what is affected is a chance of

promotion only. This Court in *Mohd. Shujat Ali and others etc.* v. *Union of India & Ors. etc.*(1) held :

> "But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion—the latter would certainly not be a condition of service...that though a right to be considered for promotion is a condition of service, mere chances of promotion are not."

In *Shujat Ali's* case the respondents went down in seniority and it was urged that this affected their chances of promotion. In *Shujat Ali* reference was made to earlier decision of this Court, *State of Mysore* v. *G.B. Purahit*(2) where also it was held that though a right to be considered for promotion is a condition of service, mere chances of promotion are not and that a rule which merely affects chances of promotion cannot be regarded as varying a condition of service. The facts of *Purohit's* case and what was decided in that case have been summarized in *Shujat Ali's* case as follows :

> "What happened in *State of Mysore* v. *G.B. Purohit* was that the districtwise seniority of Sanitary Inspectors was changed to Statewise seniority and as a result of this change, the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected... This contention was negatived and Wanchoo J., as he then was, speaking on behalf of this Court observed : It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service."

The fact that as a result of the changes made by circular No. 6 the complainants lost a few places in the panel affects their chances of promotion but not the right to be considered for promotion.

(1) [1975] 1 S.C.R. 449.
(2) C.A.2281 of 1965 decided on 25.1.1967.

That being so, it cannot be said that the alterations made by circular No. 6 amount to changing the conditions of service of the complainants; the grievance made by the complainants does not therefore appear to have any basis. The appeals are accordingly allowed and the complaints dismissed, in the circumstances of the case the parties will bear their own costs.

A

B

V.D.K. *Appeals allowed.*