

Tarsem Lal Gautam & Another vs State Bank Of Patiala And Others on 11 October, 1988

Equivalent citations: JT 1988 (1), 346 1988 SCALE (2)924, AIR 1989 SUPREME COURT 30, 1989 SCC 139, 1989 LAB. I. C. 1138, (1988) 4 JT 184 (SC), 1989 (1) UPLBEC 5, 1989 (1) SCC 182, 1988 4 JT 184, 1989 (1) BANKLJ 60 (2), 1989 SCC (L&S) 139, (1988) 3 SCJ 563, (1989) 1 LABLJ 39, (1989) 74 FJR 144, (1988) 57 FACLR 746, (1989) 1 LAB LN 314, (1989) 1 UPLBEC 5, (1989) 1 BANKLJ 60(2), (1989) BANKJ 67, (1989) 1 CURLR 110, (1989) 1 BANKCLR 1

Author: Misra Rangnath

Bench: Misra Rangnath

PETITIONER:

TARSEM LAL GAUTAM & ANOTHER

Vs.

RESPONDENT:

STATE BANK OF PATIALA AND OTHERS

DATE OF JUDGMENT 11/10/1988

BENCH:

MISRA RANGNATH

BENCH:

MISRA RANGNATH

RANGNATHAN, S.

CITATION:

JT 1988 (1) 346 1988 SCALE (2)924

ACT:

Constitution of India, 1950: Articles 14, 16 and 32--
'Equal pay for equal work'--Doctrine of--Qualitative
differences in regard to degrees of reliability and
responsibility--Applicability of Categorisation of posts
under various new categories--Regulations 6 and 7 State Bank
of PATIALA (Officers) Service Regulations 1979
Constitutional validity of.

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State Bank of Patiala (Officers) Service Regulations,
1979- Schedule I Regulation 7--Constitutional validity of--
Fitment of existing officers of the Bank in new grades and
scales of pay--Whether violates doctrine of 'equal pay for
equal work'.

HEADNOTE:

The petitioners were working as Grade A officers on the appointed date, i.e., 1.10.1979 when the State Bank of Patiala (Officers') Service Regulation, 1979 pertaining to the placement and fitment of existing officers in the new grades and scales of pay became effective. By virtue of Regulation 7 read with Schedule 1, the pre-existing Grade A officers were placed in two different grades--Senior Management Grade and Middle Management Grade--Depending on their date of promotion to Grade A being before or after 31.12.1975.

The petitioners who were placed in the Middle Management Grade have challenged in their writ petition to this Court the validity of Regulation 7 read with Schedule I of the Regulations on the grounds that (i) the Regulations merely brought about a revision of pay scales; (ii) to divide the officers of the same cadre and doing the same nature of work into two groups for the purposes of mere revision of pay scales purely on the basis of the fortuitous circumstance of the date of their promotion to the existing Grade A would be arbitrary and violative of Article 14; and (iii) the number of posts in the revised senior grade were far more than the officers arbitrarily cut-off and initially placed in that grade.

P. Savita v. Union of India, [1985] Suppl I S.C.R. 101 and Randhir Singh v. Union of India, [1982] 3 SCR 298, relied upon.

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On behalf of the Bank it was contended that: (i) the Regulations did not contemplate revision simpliciter of pay-scales of the existing cadres of officers; (ii) new categories of posts and new scales of pay not corresponding to the pre-existing categories of posts and scales had been created and, therefore, new criteria had to be evolved and applied for the placement and fitment of the existing officers into the new categories of posts and scales of pay; (iii) all the officers of any particular pre-existing category could not, en-bloc, be grafted on a particular new category or scale of pay; and (iv) there was a rational differentia in placing certain officers in the Senior Management Posts as the cut-off date was fixed having regard to the number of posts vacant in that grade on the appointed date.

Dismissing the petition, it was,

HELD: (1) The Regulations did not bring about a mere revision of pay. [490B-C]

(2) This was not a case to which the principle of 'equal pay for equal work' could straight away be applied. [490E]

(3) The qualitative differences in regard to degrees of

reliability and responsibility could not be put aside as irrelevant. There could not be any Thumb-Rule to decide the invalidity of the provisions which recognised and provided for differentiation on the basis of higher experience, reliability and responsibility. [490E-F]

Randhir Singh v. Union of India, [1982] 3 SCR 298; All Customs & Central Excise Stenographers (recognised) v. Union of India, [1988] 2 JT 519 and State of U.P. v. J.P. Chaurasia, C.A.No 56 of 1987 dated 27.9.1988, referred to.

P. Savita v. Union of India [1985] 1 SUPP. SCR 101; distinguished.

(4) The principle of classification amongst the existing Grade A officers for purposes of fitment in the new dispensation brought about by the statutory regulations could not be said to be unreasonable and arbitrary requiring to be struck down as violative of Article 14. [492C-D]

(5) If more number of posts were categorised under Senior Management Grade Scale IV` than the number of existing-officers placed into the higher scale pursuant to

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Regulation 7 read with Schedule 1, those extra number of posts in the higher scale would have to be filled-up by promotion under Regulation 17 and not by a continuing process of placement and fitment. [492F]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 13369 of 1984 (Under Article 32 of the Constitution of India). M. K. Ramamurthi and Uma Datta for the Petitioners. Shanti Bhushan and R.P. Kapur for the Respondents. The Judgment of the Court was delivered by VENKATACHALIAH, J. This Writ Petition under Article 32 of the Constitution of India raises the question of the validity of Regulation 7 read with Schedule I of State Bank of Patiala (Officers') Service Regulations, 1979 (Regulations ' for short) pertaining to the place- ment and fitment of existing officers in the service of the State Bank of Patiala in the new grades and scales of pay.

2. In the year 1959, all "State Banks"--State Bank of Patiala was one of them--were made subsidiaries of the State Bank of India under (Subsidiary Banks) Act 1959. Section 63 of this Act provided:

"63. Power of the State Bank to make regulations:

(I) The State Bank may with the approval of the Reserve Bank, make in respect of a subsidiary bank regulations, not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is, necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for--

(a) to (I) . . Omitted as unnecessary PG NO 482

(m) the conditions and limitations, subject to which the subsidiary bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service;

(n) to (y) . . Omitted as not necessary Pursuant to and in exercise of the powers of Section 63 State Bank of Patiala (Officers') Service Regulations, 1979 were promulgated. On the pattern of the recommendations made in regard to the Rationalisation and Standardisation of pay-scales of nationalised banks made by what is known as the "Pillai Committee", the pay scales in State Bank of Patiala were also revised and restructured introducing new grades and scales. The Regulations were to take effect from 1st October, 1979. Regulation 7 read with Schedule-I provided the placement and fitment of the existing officers of the bank in the new grades and scales Of pay. In the present case, we are concerned with the placement and fitment of existing officers "Grade A" to which both the petitioners Sri Tarsem Lal Gautam and Sri C. V. Madan belong.

3. The "Regulations" were promulgated. in exercise of the powers conferred by the State Bank of India (Subsidiary Banks) Act.1959, by the Central Board of Directors of the State Bank of India in consultation with the Board of Directors of State Bank of Patiala and with the previous approval of the Reserve Bank of India. Regulation 4(1) introduced the following new grades and scales of pay for the officers in the Bank:

"4(1) There shall be the following four grades for officers with the scales of pay specified against each of the grades:

(A) Top Executive Scale VII --- Rs.3000-125-3500 Grade Scale VI --- Rs.2750-125-3250 (B) Senior Management Scale V --- Rs.2500-100-2700 Grade Scale IV --- Rs.2000-100-2400 (C) Middle Management Scale III --- Rs.1800-75-

Grade	2250
Scale II	--- Rs. 1200-70-1550-75-2000

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(D) Junior Management Scale I -- RS.700-40-900-

Grade	50-1 100-EB-1200-60- 1800
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The petitioners were "existing officers" as on the appointed date i.e. on 1.10.1979 in Grade A. Existing Officers in Grade A were placed in the corresponding new grades and scales of pay. The officers in the earlier existing Grade A in the pay-scale of RS.1200-60-50-75- 950 were placed in two different cadres and scale of pay, viz., "Senior Management Grade Scale IV" with the pay-scale of RS.2000-100-2400, and "Middle Management Grade Scale III"

with the pay-scale of Rs. 1800-75-2250, on the sole basis whether the officers had been promoted to the existing Grade A on or prior to 31.12.1975 or there- after. The effect of Regulation 7 read with Schedule I was that all existing Grade A officers who had been promoted to that grade prior to 31.12.1975 were placed in the new scale ("Senior Management Grade Scale IV": RS.2000-100-2400) and those existing Grade A Officers who are promoted as such after 31. 12.1975 were placed in the new scale of "Middle Management Grade Scale III: RS.1800-75-2250".

Petitioners challenged this classification of existing- officers belonging to same grade and scale of pay into two different categories for fitment in the revised pay-scales solely on the basis of date of their promotion as arbitrary and violative of Article 14 of the Constitution of India. Regulation 7 reads:

"Subject to the provisions of Regulation 6, existing officers serving in the grades and scales of pay mentioned in column I of the table given in schedule I to these regulations shall be placed as on the appointed date in the grades and scale specified there against in column ' of the said schedule.

Provided that any difficulties or anomalies arising out of the above placement shall be referred to a committee of such persons as the Board or Executive Committee may appoint and the decision of that committee in this regard shall be final."

Relevant entries in Schedule I are:

PG NO 484 Schedule I [See regulation 7] Placement of existing Officers in the new grades and scales in the State Bank of Patiala Grade and scale Grade and scale immediately before the in which placed appointed date

1. Omitted as unnecessary
2. -do-
3. Officers 'A' Grade Senior Management promoted as such on or Grade Scale IV December, 1975 Scale Rs.2000- 100-2400 Rs.1200-60- 1500- 75- 1950
4. Other Officers 'A' Middle Management Grade Scale Rs.1200-60- Grade Scale III 1500-75-1950 Rs.1800-75-2250

5. Omitted as not necessary

6. -do-

Sri Tarsem Lal Gautam was promoted as Grade A Officer on 1.12.1978. Sri. C.V. Madan was promoted as Grade A Officer on 1.12.1976. Both of them having been promoted after 31.12.1975 in the matter of their placement they, by circular dated 23.7.1980 of the First respondent, were held to fall outside entry 3 of Schedule I and within entry 4 of that Schedule and, accordingly, placed them in the 'Middle Management Grade Scale III' and not in the higher revised scale, 'Senior Management Grade Scale IV'.

It is to be mentioned here that second petitioner Sri C.V. Madan was removed from service on 30.12.1977. But the prayers in the petition, to the extent they bear upon the correctness of his placement in so far as the benefits that he may be entitled to on that basis up to 30.12.1977, shall survive.

The main grievance of the petitioners is that the new Regulations merely brought about a revision of pay-scales and that the differentiation amongst the existing "Grade-A"

Officers who were doing the same nature of work and who PG NO 485 would continue even after the placement in the new cadre to do the same work into two grades with different scales of pay based purely on the fortuitous circumstance of the date of their promotion to the existing "Grade-A" is arbitrary. The effect of this is illustrated by the possibility that two officers doing the same duty both in the existing grades and in the revised grades are placed in two different scales of pay by reason alone that one of them had been promoted to "Grade-A" on 31st December, 1975, would go to the Higher Grade and scale of pay in the revised scale and the other would be placed in the lower scale by reason alone of the fact that he was promoted to the existing Grade the next day.

In the memorandum of writ petition, petitioners contend that existing officers belonging to Grade-A are split into two groups with reference to their date of promotion to Grade-A and this differentium is an irrational one. It is averred:

"..... Thus, the same class of officers i.e. Officers "A" Grade, were bifurcated into two different categories with reference to wholly irrational, illegal, inequitable, unreasonable and arbitrary criteria like the fortuitous event of promotion to "A" Grade on or before 31st December, 1975"

"The number of posts in SMGS IV were far more than the officers were arbitrarily cut-off and initially placed in SMGS IV at that time"

In counter affidavit dated 15.3.1985 filed by the General Manager of the first-respondent-bank it is stated:

"..... It is denied that 'A' grade officers were bifurcated into two different categories with reference to irrational, illegal, inequitable, unreasonable and arbitrary criteria like the fortuitous event of promotion as alleged. This date was fixed having regard to the number of posts vacant with the respondent No. I in the Senior Management Grade Scale IV and the number of such posts came to 32 and it was further found that 26 officers had been promoted to then officer Grade 'A' on or before December 31, 1975 The seniority of the officers for placement in Senior Management Grade Scale IV was strictly maintained and no officer junior to the petitioner was placed in Senior PG NO 486 Management Grade Scale IV. Thus, there was a rational differentia in placing certain officers in Senior Management Grade Scale IV and there was rational relationship of such placement to the objects sought to be achieved, procuring the services of senior most experienced officers for the senior management Grade Scale IV posts....."

Setting out the antecedents and the background for this restructuring of the cadres and pay-scales it is averred:

"It is submitted that in the year 1973, a Committee known as Pillai Committee was appointed by the Government of India for bringing uniformity and standardisation in the conditions of service of the officers of various nationalised Banks. The recommendations of the Pillai Committee were later on sought to be applied to the State Bank of India and its associate banks with suitable modifications having regard to their special features"

I say that the new structure of grades and scales created by State Bank of Patiala [Officers`] Service Regulations, 1979, does not lay down grades and scales corresponding to the earlier grades and scales, but it is an entirely new structure created on the basis of recommendations of the Pillai Committee suitably adopted for the subsidiary banks of the State Bank of India with some modifications and there have been bifurcations, which have resulted in intermediate grades and scales. As such, it cannot be said that the new grades and scales correspond to old grades and scales and they cannot be construed in a manner that a person who was in a particular grade or scale earlier, would automatically get entitled to be placed in some specified corresponding grade and scale without any reference to the date of his promotion in an earlier grade or scale. It is very likely that whenever reorganization of cadres takes place in service, some grades may have to be split up into more than one grade or class of posts, or more than one grade or class of posts may have to be merged to form a single cadre and as long as the inter-se seniority of the officers is not disturbed, it would be quite permissible to do so in law. In the present case also, the grades and scales were reorganised, but the inter-se seniority of the vis-a-vis the petitioner was not disturbed and no officer PG NO 487 junior to the petitioner got higher grade or scale in the reorganised structure"

We have heard Shri M.K. Ramamurthy, learned Senior Counsel in support of the petitioners and Shri Shantibhushan, learned Senior Counsel for the first respondent-bank.

Though in addition to the challenge to the unconstitutionality of the classification of the existing A-Grade Officers into two classes for purposes of fitment into the revised scales of pay, petitioner, Sri Tarsem Lal Goutam has alleged mala fies on the part of senior officers. It would appear, that he had appeared before the Selection Committee for purposes of promotion from 'Middle Management Grade Scale III' to the 'Senior Management Grade Scale IV' and was allegedly, over-looked for promotion owing to what according to him was a hostile bias against him. There are lengthy averments in the memorandum of petition in regard to these grievances and equally lengthy reputations thereof in the counter-affidavit.

At the hearing, Sri Ramamurthy, did not rest the case on mala fides and bias but confined the arguments to the question of constitutionality of the criteria of classification in Entry 3 of Schedule I. Sri Ramamurthy contended that the exercise contemplated by the Regulations. in so far as pay-scales were concerned, was a mere revision of the scales of pay and that when in the year 1983, the placements and fitments were undertaken with retrospective effect from 1.10.1979, the two sets of existing-officers Grade A, who were earlier doing the same kind of work and who even thereafter continued to do same kind of work, were bifurcated into two classes on the mere fortuitous line of demarcation of the respective dates of their promotion to the Existing Grade-A post. Sri Ramamurthy submitted that the line of demarcation was irrational in fact and impermissible in law. Those who had put in longer number of years of service, learned counsel submitted, would, of course, be entitled to and get higher pay in the same pay-scale; but dividing the Officers of the same cadre into two groups for purposes of the benefit of revision of pay merely on the basis of the date of their promotion would be palpably arbitrary and violative of Article 14.

Shri Ramamurthy contended even on the avowed basis of justification of the choice of the cut-off date line of 31.12.1975, namely, that it was intended to bring about a uniformity in all the subsidiary-banks would, apart altogether from its legality, by itself negate and detract PG NO 488 from the feebly suggested stand of the First-Respondent that the cut-off date was intended to secure the requisite number of senior and more experienced officers to man certain posts which were to be categorised against "Senior Management Grade-Scale IV". Sri Ramamurthy submitted that the words 'promoted as such on or before 31.12.1975' occurring in item 3 of the Schedule I of the Regulations, which has the effect of bringing about this hostile discrimination, would require to be struck down. With those words so deleted from item 3 of Schedule I, it was urged, the provision would be purged of the vice of unconstitutionality.

In support of his contention that mere seniority of service cannot support a classification for purposes of higher pay-scales, Sri Ramamurthy placed particular reliance on the pronouncement of this Court in *P. Savita v. Union of India*, [1985] 1 Supp. SCR 101. In that case, Senior Draughts men who were holding the posts as on 31.12. 1972, were alone held entitled to a higher pay-scale and those who had been promoted after 31.12.1972 were denied the benefit of the revision of the pay-scale. The High Court did not see substance in the challenge of the Senior Draughtsmen who were denied the benefit to the Rule; but this Court relying on the principle of "Equal pay for Equal

work" as recognised and effectuated in *Randhir Singh v. Union of India*, [1982] 3 SCR 298 held that the classification to be bad. Shri Ramamurthy invited our particular attention to the following observations of this court made while striking down the basis of the classification.

".... The explanation is that this division is based on seniority. This cannot be accepted as sufficient to meet the requirements of law. By seniority, a Senior Draughtsman will get higher pay with the increments that he earns proportionate to the number of years he is in service. Here that is not the case. It is the classification of the Senior Draughts-men into two groups, that is responsible for the higher payIn view of the total absence of any plea on the side of the respondents, that the Senior Draughts-men who are placed in the advantageous group. do not perform work and duties more onerous or different from the work performed by the appellants group, it will have to be held that this grouping violates Article 14 of the Constitution . "For the purposes of the case on hand, it is sufficient PG NO 489 to note that the classification between two groups of Senior Draughtsmen is without any basis. They do the same work, they perform the same duties, and as such the ratio of the decision in *Randhir Singh's* case applies to this case with greater force"

Shri Ramamurthy submitted that this is a full answer to the First-Respondent's contention and stated that the proper authority to plead any tenable justification for the purported classification in item 3 of Schedule I of the Regulations was the State Bank of India, which has framed and promulgated the regulations and said that though the State Bank of India was impleaded as a party, it did not enter appearance and seek to justify the principle justifying the classification.

Shri Shanti Bhushan, however, submitted that the petitioners' approach to the matter on the strength of *Savitha's* case some what misconceived as the former case was one of Revision of pay scales simpliciter while the present Regulations do not contemplate a mere revision of pay-scales of the existing cadres of officers but an exercise involving Rationalisation, Standardisation and Re-structuring of the whole Administrative set-up of the management-cadres of the Subsidiary-Banks of the State Bank of India. Shri Shantibhushan submitted that where, as here, new categories of posts and new Scales of Pay, not corresponding to the pre-existing categories of posts and scales are created, criteria will have to be evolved and applied for the subsumption and fitment of the existing officers into the new categories of posts and scales of pay. It might happen that all the Officers of any particular pre-existing category, it was urged, cannot. en-bloc, be grafted on a particular new category or scale of pay and a fair and reasonable criteria would, therefore, require to be formulated which, while protecting the inter-se seniority of the existing-officers would also make for their absorption and distribution in the new- cadres and scales of pay on some reasonable basis. Shri Shanti bhushan submitted that the Regulations 4, 6 and 7 read with Schedule I envisage such an exercise and that, indeed, similar exercises have been undertaken and implemented both in the State Bank of India and in all the other subsidiary banks. Shri Shantibhushan submitted that any acceptance of the contentiones urged for by the petitioners would have the effect of introducing new and unforeseen complications and unsettlements in respect of a large number of similar cases.

Referring to Savita's case, Shri Shantibhushan submitted that that was a case of a mere unreasonable withholding of the benefits of pay-revision to some of the members who PG NO 490 were part of a well-defined class. That apart, that was case where Senior Draughtsmen were divided into two pay-scales of Rs.330-560 and Rs.425-700 respectively and the important factor was that under the same pay-revision the lesser grade of "Draughtsmen" had the benefit of revised pay scale of Rs.330-560. The unreasonableness and injustice of the case were writ large and set it apart.

On a careful consideration of the matter, we are persuaded to the view that the 'Regulations' did not bring about a mere revision of pay and that the analogy of precedents dealing with revision of pay would not be wholly determinative and that the contentions urged by Shri Shantibhushan are not without force. Regulation 6 required the categorisation of posts under the various new categories of posts. At the hearing, Shri Shantibhushan brought to our notice that about 32 posts had been categorised against the 'Senior Management Grade IV' by the statutorily envisaged committee constituted for the purpose. It has been urged for the First-Respondent-Bank that the seniority and greater experience of the existing-Officers in Grade-A have been taken into account by the Regulations in the placement and fitment of the existing officers in the "Senior Management Grade Scale IV".

This, we think, is not an instance to which the principle of equal pay for equal work could straight away be applied. Indeed, the qualitative differences of regard to degrees of reliability and responsibility cannot be put aside as irrelevant. There cannot be any Thumb-Rule to decide the invalidity of the provisions which recognise and provide for differentiation on the basis of higher experience, reliability and responsibility. Indeed, the observations of this Court All Customs & Central Excise Stenographers (recognised) and Others v. Union of India, [1988] 2 JT 519 are apposite| "There may be qualitative difference as regards reliability and responsibility. Functions may be same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criteria which has a rational nexus with the object of PG NO 491 differentiation, such differentiation will not amount to discrimination .."

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less--it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

In Randhir Singh's case itself it was recognised thus:

" The higher qualifications for the higher grade, which may be either academic qualifications. or experience based on length of service reasonably sustain the

classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them. "

In a recent pronouncement, this Court dealt with a case, the facts of which, in comparison with those of the present one, would render the latter as a fortiori position. In *State of U.P. v. J.P. Chaurasia and Ors*, (Civil Appeal No. 56 of 1987 dated 27.9.1988 this Court noticed the question thus:

" The question is whether it is permissible to have two pay-scales in the same cadre for persons having same duties and having same responsibility ?

Reversing the decision of the High Court which in the facts of the case answered in the negative this Court observed:

"The second question formulated needs careful examination. The question is not particular to the present case. It is pertinent to all such cases. It is a matter affecting the civil services in general. The question is whether there could be two scales of pay in the same cadre PG NO 492 of persons performing the same or similar work or duties. All Bench Secretaries in the High Court of Allahabad are undisputedly having same duties. But they have been bifurcated into two grades with different pay scales . . ."

".... In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of new comers "

We think that the principle of classification amongst the existing officers Grade A for purposes of fitment in the new dispensation brought about by the statutory regulations cannot be said to be unreasonable and arbitrary requiring to be struck down as violative of Article 14.

Some arguments were advanced on the question if the number of posts categorised against "Senior Management Grade- Scale IV" was higher than those filled-up by the initial- fitment under Regulation 7 read with Schedule I, the excess number of posts would automatically go, by way of placement, to the existing officers in Grade A without the requirement of "promotion". The categorisation of posts under Regulation 6 is an exercise which is not in any way fettered by Regulation 7. If more number of posts are categorised under 'Senior Management Grade Scale IV' than the number of existing-officers placed into the higher scale pursuant to Regulation 7 read with Schedule I, the proper construction to be placed on the scheme of the Regulation is that these extra number of posts in the higher scale would have to be filled-up by promotion under Regulation 17 and not by a continuing process of placement and fitment.

There is thus, no merit in the writ petition which is accordingly dismissed. But in the circumstances, we make no order as to costs.

R.S.S.

Petition dismissed.