

Reserve Bank Of India vs N. C. Paliwal & Others on 24 August, 1976

Equivalent citations: 1976 AIR 2345, 1977 SCR (1) 377

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Hans Raj Khanna, Syed Murtaza Fazalali

PETITIONER:
RESERVE BANK OF INDIA

Vs.

RESPONDENT:
N. C. PALIWAL & OTHERS

DATE OF JUDGMENT 24/08/1976

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
KHANNA, HANS RAJ
FAZALALI, SYED MURTAZA

CITATION:
1976 AIR 2345 1977 SCR (1) 377

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R	1981 SC 1699	(10,11)
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D	1983 SC 1108	(33)
RF	1986 SC 1830	(1,2,5,7,22,26,29,31,32,35,57)
D	1987 SC 2086	(19,30)
E	1988 SC 2073	(17)

ACT:

Constitution of India Art 195D--Combined Seniority Scheme introduced ,by the Reserve Bank of India to equalise opportunities of confirmation and promotion of Clerks--Some clerks affected adversely by unforeseen circumstances--If violative of equal opportunity clause--Right of State to integrated cadres and lay down principles of seniority.

HEADNOTE :

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 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 Department. 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 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 the present 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 May 13, 1972 as a result of continuous agitation by the employees for full equalisation of opportunities between the General Department and the Specialised Departments. This Scheme was known as the Combined Seniority Scheme, and it superseded the Optee Scheme. It consisted of two parts. One part provided for the integration of the clerical staff of the General Department with the clerical staff of the Specialised Departments, and the other,

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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 cadres would be transferred who are either graduates or have 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 one third of their total non-clerical service until 7th May, 1972 (the date on which agreement was reached between the Bank and its employees in the terms of the Combined Seniority Scheme) or the date of acquiring the qualification should be taken into account.

The petitioners successfully challenged the Combined Seniority Scheme in the High Court. The High Court held that the Scheme was violative of Arts. 14 and 16 of the Constitution, because: (1) The position which obtained when the Combined Seniority Scheme was brought into force was that the petitioners were still confirmed Grade 11 clerks in the Specialised Departments, while some of the Grade II clerks in the General Departments, who were junior to them and who had either not exercised the option, or having exercised the option, were not selected, were promoted as Grade 1 Clerks in the General Departments. The result was that these Grade 11 clerks who had been promoted as Grade I Clerks in the General Department were equated to Grade I Clerks in the Specialised Departments. Therefore, according to the petitioners, the Combined Seniority Scheme had the effect of prejudicing the promotional opportunities assured to the petitioners under the Optee Scheme and hence the Combined Seniority Scheme discriminated against the petitioners in relation to the clerical staff in the General Department who either did not exercise the option under the Optee Scheme or having exercised the option, were not selected; (2) it discriminated against the petitioners vis-a-vis others who had opted under the Optee Scheme of 1965 and who had obtained promotion as Grade I clerks in their respective Specialised Departments before the intro-

duction of the Combined Seniority Scheme; and (3) (a) the Scheme treated alike the non-clerical staff as well as the clerical staff by integrating them together in one cadre with a combined seniority list though they formed two distinct and separate classes, and thus violated the equality clause; (b) by permitting, in the case of non-clerical staff, one-third of the total non-clerical service until 7th May, 1972 or the date of acquiring the qualification, to be taken into account for the purpose of seniority, the Bank laid down a wholly irrational and unjust principle of seniority in the integrated service and violated the equal opportunity clause and; (c) the seniority of the petitioners was adversely affected by the integration without giving any opportunity to them and thus the introduction of the Combined Seniority Scheme violated the principles of natural justice.

Allowing the appeal to this Court and upholding the validity of the Combined Seniority Scheme.

HELD: (1) Assuming that the Reserve Bank is State under Art. 12, and therefore subject to Arts. 14 and 16, 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 Departments with those of Grade II clerks in the Specialised Departments by giving an option to the former to be absorbed in the latter. This object was carried out as soon as the petitioners and other Grade II clerks in the General Departments 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 Specialised Departments. There was no assurance given by the Bank that the promotional opportunities available to Grade II clerks in the Specialised Departments will not be diminished. The Combined Seniority Scheme affected 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

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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 is a wholly fortuitous result.

It might cause heart-burning amongst the petitioners that they still continue to be Grade II clerks but whenever services are integrated, some hardship is bound to result as a necessary consequence of integration. [389 F; 391 B--G]

(2) The Reserve Bank did not undertake that it will not take any steps for bringing about total integration of the clerical 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 its validity cannot 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 Combined Seniority Scheme was introduced, is all part of the exigencies of service and in law no grievance can be made against it. [392 D--E]

(3) (a) The integration of different cadres into one cadre cannot be said to involve any violation of the equality clause. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical service sought to be effectuated by the Combined Seniority Scheme cannot, in the circumstances, be assailed as violative of the principle of equality. [393 F]

Kishori Mohanlal Bakshi v. Union of India AIR 1962 S.C. 1139 referred to

(b) It is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such a rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class. [393 G-H]

In the present case the employees from non-clerical cadres were being absorbed in the clerical cadre, and, therefore, a rule for determining their seniority vis-a-vis those already in the clerical cadre had to be devised. To ignore their entire non-clerical service would have been unjust to them, and to take into account their entire non-clerical services would be unjust to those in the clerical service. The Bank therefore, decided that one third of the non-clerical service rendered by the employees coming from non-clerical cadres should be taken into account for the purpose of determining seniority. It strikes a just balance between the conflicting claims of non-clerical and clerical staff and cannot be condemned as arbitrary or discriminatory. [394 A--B]

Anand Parkash Saksena v. Union of India [1968] 2 S.C.R. 611, referred to.

(c) (i) The contention that there was violation of principles of natural justice was not raised before the High Court; (ii) Even if the contention is allowed be raised in this Court, there was no question of any existing seniority of the petitioners being disturbed by changing the rule of seniority. The problem was fitting into the clerical cadre employees coming from non-clerical cadres. For that purpose, a new rule was required to be made. The rule did not affect the petitioners' seniority, and hence, there was no question of giving the petitioners an opportunity to make representation against it. [394 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1231 of 1973 and 1408 of 197.

(From the Judgment and Order dated 11-5-1973 of the Delhi High Court in Civil Writ No. 690/72).

B. Sen, and L N. Shroff for the Appellant (in Appeal No. 1231/73) S.V. Gupte, P.P. Rao and A.K. Ganguli for Respondent Nos. 1, 2, 4, 6-18, 20, 22, 23, 25-32, 34 and 35.

M.K. Ramamurthi, C. N. Murti and R. C Pathak for Respondent 36.

M.K. Ramamurthi, C.N. Murti and R. C: Pathak for the Appellant (in Appeal No. 1408/74).

P.P. Rao and A.K. Ganguli for Respondents 1, 2, 4, 6-18, 20, 22, 23, 25, 32, 34 & 35.

B. Sen and I. N. Shroff for Respondent 36.

The Judgment of the Court was delivered by BHAGWATI, J.---The Reserve Bank of India is the appellant in Civil Appeal No. 1231 of 1973. This appeal, on certificate, is directed against a judgment of the High Court of Delhi allowing Writ Petition No. 690 of 1972 filed by some of the employees of the Reserve Bank challenging the validity of the combined seniority Scheme issued by the Reserve Bank of India by its Circular dated 13th May, 1972. This judgment of the High Court is also assailed by the All India Reserve Bank Employees Association (hereinafter referred to as the Association) by preferring Civil Appeal No. 1408 of 1974 after obtaining certificate from the High Court. Both these appeals have been heard together since they are directed against the same judgment and all the arguments raised on behalf of the appellants are also common except one additional argument advanced on behalf of the Association in Civil Appeal No. 1408 of 1974. The facts giving rise to these two appeals are a little important and it is necessary to state them in order to appreciate the questions arising for determination in the appeals. The primary purpose for which the Reserve Bank of India was originally constituted was "to regulate the issue of bank notes and the keeping of the reserves with a view to securing monetary stability in India and generally to oper-

ate the currency and the credit system of the country to its advantage". But in course of time other functions came to be added as a result of various statutes passed by the Parliament from time to time to meet the economic needs of the country. The administrative machinery of the Reserve Bank' for carrying out these diverse functions was at the material time divided into the following five groups of departments: (1) Group I: General Side. that is, Banking Department, Issue Department, Public Debt Division and Exchange Control Department; (2) Group II: Department of Banking Operations, Development and Industrial Finance Department and Department of Non-banking Companies; (3) Group III: Agricultural Credit Department, (4) Group IV:

Economic Department and Department of Statistics and (5) Group V: Industrial Development Bank of India. The departments falling within the first group were known as the general departments, while the departments falling within the other four groups were known as the specialised departments. Though recruitment to these different groups of departments was made on a common basis, each group of departments was treated as a separate unit for the purpose of determining the seniority and promotion of the employees within that group and this was done on centrewise basis. The result was that there was a separate seniority list for the employees in each group of departments at each centre of the Reserve Bank and the employees could seek confirmation and promotion only in the vacancies arising within their own group of departments at their own centre.

There were two grades of clerks in each group of departments, namely, Grade I and Grade II. The pay scales of Grade I and Grade II clerks in all the groups of 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. While Grade I and Grade II clerks in the specialised departments were invariably graduates, those in the general departments were not always so. Some out of them were graduates, while others were non-graduates. There were also several categories of non-clerical posts in the general as well as specialised departments. They were in Grade II and the pay scale this Grade was the same as that of Grade II clerks in the general and specialised departments. It appears from the Circular of the Reserve Bank dated 13th May, 1963 that Stenographers, Typists and Coin/ Note Examiners, though falling within the category of non-clerical staff, were sometimes transferred as Grade II clerks and by this circular, it was decided that "with effect from 1st July, 1963, the transfer of staff from one category to another should be governed" by the principles there set out. Two categories of transfers were contemplated by this Circular: one was transfer by selection and the other was transfer on grounds of health. The first category of transfers by selection required that the Stenographer, Typist or Coin/Note Examiner seeking transfer would have to be a graduate or should have passed both parts of the Institute of Bankers' Examination and his application for transfer would be considered by the manager from the point of view of his record of service and his suitability for transfer to the clerical grade and he would then have to appear for interview before a selection board

and it was only if he was selected that he would be transferred as Grade II clerk. But once he was transferred as Grade II clerk, his seniority in the new cadre would be counted from the date on which he joined service, as a Typist or Coin/Note Examiner and in the case of a Stenographer, from the date on which he joined service as a Typist or as a Stenographer in case he was directly recruited as such "provided that the said date shall not be earlier than the date on which the transferee acquired the degree or banking qualification by reason of which he became eligible for such transfer: that is to say, in the case of a Coin/Note Examiner/ Typist/Stenographer who graduates or acquires the banking qualifications after the date of his joining service, he will be deemed to have joined service "only on, the date he acquired the said qualification".

The second category of transfers was on grounds of health. However, that is not material for our purpose and we need not consider it.

It seems that in view of the expanding activities of the Reserve Bank in the Specialised Departments, there were greater opportunities for confirmation and promotion for employees in the specialised departments as compared to those available to employees in the general departments. This gave rise to dissatisfaction amongst employees in the general department and they claimed for equalising the confirmation and promotional opportunities by having a combined seniority list for all employees in Class III irrespective of the departments to which they belonged basing promotions on such combined seniority list. This question was also raised by the Association before the National Tribunal consisting of Mr. Justice K.T. Desai and it was pleaded by the Association that "all promotions should be made strictly according to the combined seniority irrespective of the cadre of department". The Reserve Bank, on the other hand, sought to justify the maintenance of separate seniority lists for various departments on the ground that the work in each department was becoming more and more of a special nature and inter-transferability was not only undesirable in the best interest of the Bank, but it was also hard to achieve. The National Tribunal, while not accepting the demand of the Association and expressing its inability to give any direction to the Reserve Bank in regard to this question, made the following observations in its Award:

" I can only, generally, observe that it is desirable that wherever it is possible, without detriment to the interests of 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 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 approved by Hidayatullah, J., as he then was, speaking on behalf of this Court in *All India Bank Employees Association v. Reserve Bank of*

India(1) at page 57.

In view of these observations of the National Tribunal, which were endorsed by this Court, the Reserve Bank took the first step towards equalising the confirmation and promotional opportunities of employees in the General Departments by introducing the Optee Scheme of 1965 by a Circular dated 29th June, 1965. Clause (1) of the Scheme provided that all vacancies in Grade II Clerks occurring in Specialised Departments in each centre upto 30th June, 1970 would be treated as expansion vacancies to be filled up by transfer of confirmed Grade II Clerks including officiating Grade I Clerks in the (1) [1966] 1 S.C.R. 25.

General Departments. The manner in which these vacancies shall be filled was set out in clauses (2) and (3) which read inter alia as follows:

"A circular will be issued inviting applications in form 'A' from confirmed graduate Clerks Grade 1I (including officiating Clerks Gr. I) of the General Side (Group 1) for the preparation of a panel of suitable employees who are willing to opt for transfer to any of the Departments in Groups II, 1II and V at each centre under the optee scheme.--As regards the non-clerical staff transferred to the clerical cadre, only those who have been absorbed against permanent vacancies of clerks Gr. II on the General Side will be eligible to opt for transfer.

(i) The panel will be a consolidated one, i.e., separate panels will not be prepared for each of the Departments in Groups II, 1II and V at each centre.

(ii) The option exercised by the employees will be subject to the approval of the 'Manager' depending on their past record of service and suitability for transfer to departments in Groups II, III and V.

(iii) (a) The position of employees on the panel, recruited directly as clerks Gr. II from the waiting list of graduate clerks Gr. II will be determined according to their dates of recruitment.

(b) In the case of employees recruited from the waiting list of undergraduate clerks Gr. II who have become graduates while in service, and in the case of non-clerical graduate staff transferred to the clerical cadre, their position in the panel will be determined according to their dates of graduation.--

(iv) As and when vacancies arise in the Depart-

ments in Groups II, III and V at each centre, they will be filled up by drawing on the panel, the first vacancy going to the first person on the panel, the second to the second and so on. An employee will have no choice of the Department to which he will be posted. The posting will be made in the order in which the vacancies arise.

(v) Officiating clerks Gr. I will be transferred only in their substantive capacity as clerks Gr. II

(vi) (a) The seniority of the optees on transfer to the Departments in Groups II, III and V will be determined on the basis that their transfers to the concerned Departments have been made in the interest of the Bank, that is to say, the substantive position of the transferee in the seniority list of the Department concerned will be fixed above and employee who joined service after the date of his recruitment or date of graduation as the case may be and below the employee who joined service before the date of his recruitment/graduation

(c) The above method of fixation will, however be subject to the provision that if a substantially junior employee in the Department to which the transferee is posted is already officiating in that Department in a higher grade on a longterm basis on the date the transferee reports for duty that officiating employee will be considered senior to the transferee. The inter-se seniority of the transferee posted to the same Departments in Group II, III and V will be fixed in the order in which their names are listed in the panel

(viii) The panel will be revised annually." It will be seen that 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 Departments. But there also, every Grade II Clerk and Officiating Grade I Clerk was not entitled to be absorbed in the Specialised Departments as of right, but he had to go through a process of selection and the option exercised by him was "subject to the approval of the Manager depending on his past record of service and suitability for transfer" to the Specialised Departments. If he exercised the option and 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 Departments at the time of the exercise of the option, he would lose the benefit of officiation in Grade I in the General Departments as also the monetary benefit of Rs. 25/- per month which he was getting during such officiation. His seniority in the cadre of Grade II Clerks in the Specialised Department in which he was absorbed would be liable to be determined on the basis of his length of service calculated from the date of his recruitment if he was also a graduate when he joined service or from the date of his graduation if he became a graduate whilst in service. The rationale behind this provision obviously was that graduation being regarded as essential qualification for being a Grade II Clerk in the Specialised Departments, the length of service from the date of graduation alone. should be taken for the purpose of determining the seniority of transferees from the General Departments.

The petitioners in Writ Petition No. 690 of 1972, who may for the sake of convenience be hereafter referred to as the petitioners. were, at the time of the introduction of the Optee Scheme of 1965, confirmed Grade II Clerks in the General Departments and some of them were officiating in the General Departments as Grade I Clerks. Though most of the petitioners were recruited as Grade II Clerks from the beginning, so far as petitioners 4, 9, 16, 18, 19, 23 and 26 were concerned, they were originally recruited to non-clerical posts and subsequently transferred as Grade II clerks by selection and that is how at the date when the Optee Scheme of 1965 came into force, they were confirmed Grade II Clerks in the General Departments. The petitioners exercised the option under the Optee Scheme of 1965 and were absorbed substantively as confirmed Grade II Clerks in one or

the other of the Specialised Departments. Obviously, the consequence was that those of the petitioners who were officiating as Grade I Clerks in the General Departments lost their officiating position as a result of this transfer together with the attendant monetary benefit of Rs. 25/- per month.

Besides the petitioners, there were also other confirmed Grade I[Clerks and Officiating Grade I Clerks in the General Departments who, having exercised the option and being selected, were taken over as confirmed Grade I1 Clerks in the Specialised Departments. Some of them--a few--were, in due course, in order of seniority, promoted as Officiat- ing Grade I Clerks in their respective Specialised Depart- ments. But before the turn of the petitioners for promo- tion could arrive, a new Scheme was brought into force to which we shall presently refer. It appears that the Asso- ciation was not satisfied with the Optee Scheme of 1965 as it did not go far enough and equalised opportunities for only a section of the employees in the General Depart- ments, namely confirmed Grade II Clerks and Officiating Grade I Clerks, leaving the rest in the same disadvantageous position as before. The Association, therefore, continued to press its demand for complete equalisation of opportu- nities and in 1969, the Reserve Bank took one further step with a view to partly satisfying that demand. The Reserve Bank introduced another Scheme called the Optee Scheme of 1969 for transfer of confirmed Grade I Clerks in the Gener- al Departments to the Specialised Departments to the extent of one-third of the long term normal vacancies of Grade I Clerks arising in the Specialised Departments during the period from 1st February, 1969 to 30th June, 1970. But this also did not satisfy the Association for what the Associa- tion desired was full equalisation of opportunities between the General Departments and the Specialised Departments. 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 d 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.

The Combined Seniority Scheme consisted broadly of two parts. One part provided for the integration of the clerical staff of the General Departments with the clerical staff of the Specialised Departments and the other, for the switch- over and integration of the non-clerical staff with the clerical staff in all the Departments of the Reserve Bank Clauses (8) and (9) dealt with the first part and they provided inter alia as follows:

"8. Combined Seniority between clerical staff in dif- ferent departments The seniority lists of the staff mentioned below work- ing in the general side and Specialised Departments (i.e. in all the Groups 1 to V of the Department-wise grouping) will be merged into one with effect from 7th May, 1972 in accordance with the provisions of clause 10 in the manner set out below:

(a) All Clerks Grade II, Field Investigators and Clerks Grade I (with less than one year total officiating service) will be placed in the combined seniority list, relative seniority of an employee being fixed according to the date of his first appointment as Clerk/Field Investigator.

(b) All confirmed Clerks Grade I, Clerks Grade I officiating as such on 7th May, 1972 with one year or more total officiating service, Assistants (temporary, officiating as well as confirmed) and Field Inspectors will be placed in the combined seniority list ranking as a group above the employ-

ees listed under sub-clause (a) above. The relative seniority of an employee will be fixed on the basis of the total length of service put in by him from the date he first started officiating as Clerk Grade I/Field Inspector after deducting therefrom periods during which he reverted as clerk Grade II/Field Investigator otherwise than on account of proceeding on leave.

(c) Fixation of seniority as referred to in sub- clauses (a) and (b) above will be subject to the proviso that the inter-se position as between two employees in the existing groupwise/departmentswise seniority lists is not disturbed to the detriment of any senior employee within the same group/department except as provided for in clause 6 and sub-clause (e) below.

(d) x x x x

(e)' The seniority of class III personnel having been fixed as provided for in sub-clauses (a) and

(b) above the seniority of an optee, selected clerk in the existing specialised departments whose seniority compared to his juniors in the existing General side is adversely affected will be protected to the extent of his entitlement had he not opted/been selected under the optee/select- ed scheme: Provided that he shall apply in this regard in writing within one month from the date of notification of the combined seniority list. Applications for such adjustments will not be entertained after expiry of the period stipulated above.

9. (i) (a) Employees officiating as Clerks Grade I on 7th May, 1972.

An employee officiating as a Clerk Grade I as on 7th May 1972 will continue to officiate without prejudice to the claims of employees whose position may be above him in the. combined seniority list. he reverts, his next promotion will be according to his substantive seniority in the combined list. Reversion only on account of proceeding on leave will not be deemed as reversion for the purpose this clause.

(b) Promotion as Clerks Grade I between 7th May 1972 and the notification of the combined seniority list.

Promotions during this period will be made with reference to the existing departmental/groupwise seniority list but without prejudice to the claims of seniors in the combined seniority list. When the

combined seniority list, becomes available, a review of all such promotions made in the interregum will be made and senior employees not officiating in the higher grades will be promoted by replacing the junior employees. The review will be completed within a period of two weeks.

(c) Promotions as Clerks Grade I thereafter. Promotions will be made from the combined seniority list"

The second part Was provided for in clauses (1) to (7) and these clauses, so far as material read thus:

"1. Combined seniority between clerical staff and eligible non-clerical staff opting for switchover:

(a) 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 (Reference is not to the department-wise groups) who are graduates or have passed both parts of Institute of Bankers Examination will be eligible to exercise an option in accordance with sub-clause

(a) or (b) of clause 2 to be transferred, automat-

ically and without any screening, to posts in the clerical cadre which are vacant and are other than of a purely stop gap or short term nature, subject to subclause (b) below. Actual transfer to positions involving clerical duties will be effected in a phased manner as laid down in clause 7.

(b) On such option being exercised within the period of two months as per clause 2 (a), or one month as per clause 2 (b) as the case may be, the position of such optee will be fixed in the combined seniority list by counting for the purpose of seniority in the clerical cadre one-third of his total non-clerical service in Class III in the Bank until 7th May 1972 or the date of acquiring the qualification i.e. the date of publication of the results of the examination, as the case may be (vide clauses 3(a) and 3(b).

2. (a) x x x x

(b) Any employee who acquires the qualification for eligibility after the 7th May 1972, will have, within one month of acquiring the said qualification, to exercise his option whether he desires to switch over to the clerical cadre with his seniority being determined as per clause I(b). The option once exercised shall be final subject to the right of revocation and with the same consequences, as at subclause (a) above. Those eligible but not exercising the option within the, aforesaid period of one month shall lose 'the right of option thereafter.

3. (a) The notional seniority in the clerical cadre of those employees who are eligible for switchover on the 7th May 1972 and exercise their option under clause 2(a) will be fixed with effect from 7th May 1972.

(b) In respect of employees who acquire the eligibility qualification in future and exercise their option under clause 2(b), their notional seniority in the clerical cadre will be fixed with effect from the date of acquiring such qualification viz. date of publication of the results of the examination.

(c) Fixation of seniority whether under sub-clause

(a) or (b) will, however, be subject to the proviso that the inter-se position as between two employees in the concerned seniority list of non-clerical employees as it stood immediately before the 7th May 1972 or the date of acquiring the qualification for switchover is not disturbed to the detriment of a senior employee as in the relevant seniority list.

(Illustration for fixation of seniority is Enclosure. I)

4.(a) An employee opting for switchover will, for the purpose of compilation of the combined seniority list, be deemed to be a member of 'the clerical cadre with effect from the date as at clauses 3(a) and 3(b), as the case may be.

(b) Until such time as he is actually transferred to the clerical cadre an optee from the non-clerical grade in which he is placed at the time of option and will accordingly remain eligible for promotion in the non-clerical cadre;

Provided that an employee officiating in a category that is listed as group II, VI, VII or VIII of Annexure as the case may be confirmed in that category only if he revokes his earlier option before confirmation, for which he will have an opportunity."

—It may be pointed out that though the Optee Scheme of 1965 was originally intended to be operative only upto 30th June, 1970, it was continued right upto the time that the Combined seniority Scheme came into force. The effect of the Combined Seniority Scheme was that it superseded the Optee Scheme of 1965. The petitioners were aggrieved by the Combined Seniority Scheme since according to them it affected their chances of confirmation and promotion and placed them in a disadvantageous position and accordingly they filed Civil Writ No. 690 of 1972 in the Delhi High Court challenging the validity of the Combined Seniority Scheme on various grounds relating to Articles 14 and 16 of the Constitution. These grounds of challenge found favour with the Division Bench of the Delhi High Court which heard the petition and the Division Bench quashed and set aside the Combined Seniority Scheme on the view that it was violative of Articles 14 and 16 of the Constitution. The three main grounds on which the Division Bench found fault with the Combined Seniority Scheme were first, that it discriminated against the petitioners vis-a-vis the others who had opted under the Optee Scheme of 1965 and who had obtained promotion as Grade I Clerks in their respective Specialised Departments before the introduction of the Combined Seniority Scheme; secondly, it discriminated against the petitioners in relation to the clerical staff in the General Departments who either did not exercise the option under the Optee Scheme of 1965 or having exercised the option, were not selected and thirdly, it treated alike the non-clerical staff as well as the clerical staff by integrating them together in one cadre with a combined seniority list, though they formed two distinct and separate classes unequal to each other. The Division Bench

accordingly allowed the petition and struck down the Combined Seniority Scheme. Two appeals were thereupon preferred to this Court after obtaining a certificate of fitness from the Delhi High Court, Civil Appeal No. 1231 of 1973 by the Reserve Bank and Civil Appeal No. 1408 of 1974 by the Association. Both the Reserve Bank and the Association seek to sustain the validity of the Combined Seniority Scheme in these appeals substantially on the same grounds.

We will assume for the purpose of these appeals that the Reserve Bank is a "State" within the meaning of Article 12 of the Constitution and hence subject to the limitations imposed by Article 14 and 16. It was in fact so held by the Delhi High Court and this view was not seriously assailed before us on behalf of the Reserve Bank. The question which, therefore, requires to be considered is whether the Combined Seniority Scheme in any way falls foul of Articles 14 and 16. The Delhi High Court relied on three grounds for invalidating the Combined Seniority Scheme under Articles 14 and 16 and the same three grounds were also canvassed before us in these appeals, but we do not think there is any substance in them. We shall examine these grounds in the order in which they were advanced before us.

The first ground was that the Combined Seniority Scheme discriminated unjustly against the petitioners vis-a-vis those confirmed Grade II Clerks and Officiating Grade I Clerks in the General Departments who either did not exercise the option under the Optee Scheme of 1965, or, having exercised the option, were not selected. The argument of the petitioners under this head of challenge was that the Optee Scheme of 1965 was introduced by the Reserve Bank for the purpose of improving the promotional opportunities of Grade II Clerks in the General Departments by absorbing them in the cadre of Grade II Clerks in the Specialised Departments where there were greater promotional opportunities by reason of a larger number of posts in the higher grades. That was the implied assurance given by the Reserve Bank as part of the Optee Scheme of 1965 and the petitioners, acting on this assurance, exercised the option to be transferred as confirmed Grade II Clerks in the Specialised Departments, some of them even giving up their officiating position as Grade I Clerks and losing in the process the officiating monetary allowance of Rs. 25/- per month. The Reserve Bank was, in the circumstances, precluded from introducing the Combined Seniority Scheme which had the effect of prejudicing the promotional opportunities assured to the petitioners, until the petitioners got their promotion to higher posts in the Specialised Departments in accordance with such assurance. The position, however, which obtained when the Combined Seniority Scheme was brought into force was that the petitioners were still confirmed Grade II Clerks in the Specialised Departments, while, as compared to them, some of the Grade II Clerks in the General Departments, who were junior to the petitioners and who had either not exercised the option or, having exercised the option, were not selected were already promoted as Grade I Clerks in the General Departments. In this situation, the effect of the Combined Seniority Scheme was that though theoretically, by reason of cl. (8)(c), the petitioners were given seniority over these Grade II Clerks who had been promoted as Grade I Clerks in the General Departments, the latter retained their higher Grade I in the Combined Seniority Scheme and thus secured an advantage over the petitioners. This was the anomalous and unjust result brought about by the Combined Seniority Scheme and that, according to the petitioners, introduced a serious infirmity. This argument, we are afraid, is more an argument of hardship than of law and we do not think we can accept it.

When the petitioners opted to be transferred to the Specialised Departments under the Optee Scheme of 1965, they obviously did so as they thought that they would have quicker chances of promotion in the Specialised Department than in the General Departments. But it appears that before their turn for promotion as Grade I Clerks in the Specialised Departments could come, some vacancies occurred in the cadre of Grade I Clerks in the General Departments and naturally they were filled up by promotion of Grade II Clerks in the General Departments. Some of these Grade II Clerks who were promoted were junior to the petitioners, but they got an opportunity for promotion as the petitioners went out of the General Departments by exercising the option to be transferred to the Specialised Departments. This was a wholly fortuitous possibly not anticipated by the petitioners or perhaps the petitioners might have thought that they would have an advantage in the matter subsequent promotions to posts higher than Grade I Clerks. Be that as it may, the fact remains that this was the position which obtained at the date when the Combined Seniority Scheme was introduced by the Reserve Bank. The question is, was there anything which prevented the Reserve Bank from doing so ?

We fail to see how from the mere introduction of the Optee Scheme of 1965, any promise or assurance could be spelt out on the part of the Reserve Bank not to take any steps towards integration of other employees not covered by the Optee Scheme of 1965. 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. And the question would again be: promoted how far--one stage or two stages or more than that ? It is obvious that the only object of the Optee Scheme of 1965 was to equalise the promotional opportunities of Grade II Clerks in the General Departments with those of Grade II Clerks in the Specialised Departments by giving an option to the former to be absorbed in the latter. This object was carried out as soon as the petitioners and other Grade II Clerks in the General Departments opted to be transferred to the Specialised Departments. Then they became Grade I Clerks in the Specialised Departments having the same promotional opportunities as the original Grade II Clerks in the Specialised Departments. There was no assurance given by the Reserve Bank that the promotional opportunities available to Grade II Clerks in the Specialised Departments will not be diminished. The Combined Seniority Scheme affected 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 and treated them alike in bringing about total integration of the employees in the several Departments. 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. Both were affected equally by the Combined Seniority Scheme. Now under the Combined Seniority Scheme, the integration could only be on grade to grade basis and, therefore, if by the time the Combined Seniority Scheme came into force, Grade II Clerks, junior to the petitioners, had become Grade I Clerks in the General Departments, they could be equated only with Grade I Clerks in the Specialised Departments and to this equation, no valid objection could be taken on behalf of the petitioners. Undoubtedly, it would cause heart-burning amongst the petitioners to find that Grade II Clerks, junior to them in the General Departments, have become Grade I Clerks in the integrated service, while they still continue to be Grade II Clerks, but that is a necessary consequence of integration. Whenever services are integrated, some hardship is bound to result. Reasonable

anticipations may be belied. The second ground on which the petitioners challenged the validity of the Combined Seniority Scheme was that it discriminated against the petitioners vis-a-vis other Grade II Clerks who had opted under the Optee Scheme of 1965 and obtained promotion as Grade I Clerks in their respective Specialised Departments before the introduction of the 9--1104SCI/76 Combined Seniority Scheme. The contention of the petitioners was that some of the Grade I Clerks who had opted under the Optee 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 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 Scheme for the purpose of integrating the clerical staff in all the departments and the 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 not such assurance given by the Reserve Bank when it introduced the Optee Scheme of 1965. What it did was merely to equalise the opportunities 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 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 at a time when some of the transferee Grade II Clerks still remained to be promoted and was discriminatory against them. It may be that some transferee Grade I 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.

That takes us to the last ground of challenge which relates to integration of non-clerical with clerical services. This ground of challenge was advanced under three heads: first, non-clerical services and clerical services were wholly different from each other and by integrating them into one cadre, the Reserve Bank failed to recognise their differences and treated unequals as equals, thereby offending the equality clause of the Constitution secondly, by permitting, in case of non-clerical staff, one-third of the total non-clerical service until 7th May, 1972 and in case of those who become graduates or pass both parts of institute of Bankers Examination subsequent to 7th May, 1972 until the date of acquiring such qualification to be taken into account for the purpose of seniority, the Reserve Bank laid down a wholly irrational and unjust principle of seniority in the integrated service and thereby violated the equal opportunity clause and lastly, the seniority of the petitioners was adversely affected by the integration without giving any opportunity to them to represent against it and the Combined Seniority Scheme was, therefore, in violation of the principles of natural justice. We have carefully examined these three heads of challenge, but we do not find any substance in them. They are based on a misconception of the true nature of the process involved in integration of non-clerical with clerical services. There was, as already pointed out above, a non-clerical cadre in each Department of the Reserve Bank and it was decided by the Reserve Bank that the nonclerical cadres in all the Departments should be integrated with the clerical cadre. With that end in view, the Combined Seniority Scheme gave an option to all employees in non-clerical

cadres to be transferred to posts in the clerical cadre, but in the interest of efficiency, pre-scribed a qualification that only those employees in non-clerical cadres would be entitled to be transferred who are either graduates or have passed both parts of Institute of Bankers Examination. Now, when the employees from non-clerical cadres are admitted in the clerical cadre, some rule would have to be made for determining their seniority vis-a-vis those in the clerical cadre. They would have to be fitted into the clerical cadre and for that purpose, some rule would have to be devised for determining how they shall rank in seniority. The Combined Seniority Scheme adopted the rule that for determining the seniority of non-clerical staff who exercised the option and were admitted in the clerical cadre, one-third of their total non-clerical service "until 7th May, 1972 or the date of acquiring qualification" should be taken into account. This was the manner in which the Combined Seniority Scheme sought to bring about integration of non-clerical with clerical services in the several departments of the Bank. Now, the first question which arises for consideration is whether the Reserve Bank violated the constitutional principle of equality in bringing about integration of non-clerical with clerical services. We fail to see how integration of different cadres into one cadre can be said to involve any violation of the equality clause. It is now well settled, as a result of the decision of this Court in *Kishori Mohanlal Bakshi v. Union of India*(1) that Article 16 a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality.

Then we come to the question of the rule of seniority adopted by the Combined Seniority Scheme. Now there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class. Now, here, employees from non-clerical cadres were being absorbed in the clerical cadre and, therefore, a rule for determining their seniority vis-a-vis (1) A.I.R. 1962 S.C. 1139.

those already in the clerical cadre had to be devised. Obviously, if the non-clerical service rendered by the employees from non-clerical cadres were wholly ignored, it would have been most unjust to them. Equally, it would have been unjust to employees in the clerical cadre, if the entire non-clerical service of those coming from non-clerical cadres were taken into account, for non-clerical service cannot be equated with clerical service and the two cannot be treated on the same footing. Reserve Bank, therefore, decided that one-third of the non-clerical service rendered by employees coming from non-clerical cadres should be taken into account for the purpose of determining seniority. This rule attempted to strike a just balance between the conflicting claims of non-clerical and clerical staff and it cannot be condemned as arbitrary or discriminatory. Vide:

Anand Parkash Saksena v. Union of India.(1) The last contention of the petitioners was that seniority is a civil right and the State cannot interfere with it to the prejudice of an employee without giving an opportunity to him to be heard and since the Combined Seniority Scheme adversely affected the seniority of the petitioners in the clerical cadre without giving them an opportunity to represent against it, it was void and inoperative. There are two answers to this contention and each is, in our opinion, fatal. In the first place, we do not find from the judgment of the High Court that this contention was at any time advanced before the High Court and, in the circumstances, we do not think it would be right to permit it to be raised for the first time before this Court. Secondly, even if this contention were allowed to be raised, we do not think it can be sustained. Here, there was no question of any existing seniority being disturbed by change in the rule of seniority. The problem was of fitting into the clerical cadre employees coming from non-clerical cadres and for that purpose, a new rule was required to be made which would determine the seniority of these new entrants vis-a-vis those already in the clerical cadre. Such rule did not affect seniority and hence there could be no question of giving the petitioners an opportunity to make representation against it.

These were the only contentions urged before us against the constitutional validity of the Combined Seniority Scheme and since there is no substance in them, we think that the High Court was in error in striking down the Combined Seniority Scheme. We accordingly allow the appeals, set aside the judgment and order of the High Court and uphold the validity of the Combined Seniority Scheme. There will be no order as to costs.

V, P. S.

Appeals

allowed.

(1) [1968] 2 S.C.R. 611, 622.