(1983) 12 GUJ CK 0025

In the Gujarat High Court

N.H. Dhyani and Others APPELLANT

Vs

Dena Bank and Others RESPONDENT

Date of Decision : 16-12-1983

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2)
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (1984) 2 GLR 1441

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—If you start with confusion, no amount of industry and perseverance can get you relieved from the cobweb. Harder you work and get the confusion worse confounded. This is what has happened in this case wherein the petitioners who are serving as officers in the respondent-Bank have inter alia prayed that the respondent-Bank be directed to take certain obligatory steps as required under the provisions of Dena Bank (Officers) Service Regulations, 1979.

2. The petitioners are serving as Officers in the respondent-Dena Bank, a Government of India undertaking. Prior to 1-7-1979 there were three types of Officers in the respondent-Bank, namely. Scale ''A'' Scale ''B'' and Scale ''C'' Officers in descending order. For the purpose of this petition the position of the respective petitioner as on June 30, 1979 is relevant. On June 30, 1979 the petitioners Nos. 1 to 9 were holding the post of erstwhile Officer Grade ''C while petitioners Nos. 10 to 12 were holding the post of erstwhile officer Grade ''B.''

3. On July 1, 1979, Dena Bank (Officers) Service Regulations, 1979 (''the Regulations,'' for short) came into force. As per the provisions of the said Regulations certain actions were required to be taken by the respondent-Bank. The petitioners felt that the Bank had not taken necessary actions as required under the Regulations. Therefore the petitioners have filed the present petition inter alia praying that the respondent-Bank be directed to make categorisation

under Regulation 6 as per the Government guideline and further prayed that the respondents be directed to categorise the petitioners and other similarly situated officers as indicated in Annexure "H" to the petition and be given all the benefits from the appointed date i.e. July 1, 1979. The petitioners have also prayed that the respondent-Bank be restrained from making further promotions of the Bank without first effecting categorisation under Regulation 6. The aforesaid prayers have been made on various grounds. The respondent-Bank has appeared and filed affidavit-in-reply and resisted the claim of the petitioners on facts as well as on law points.

4. The 14 major commercial banks in the country were nationalised in the year 1969. On account of the nationalisation of these banks, various administrative and managerial problems arose. Therefore with a view to solve these problems the Government appointed a committee popularly known as "Pillai Committee." After considering the report of the aforesaid Committee and also the report and/ or recommendations of another Committee (called Expert Committee) appointed subsequently the Central Government circulated a draft of Service Regulations to all the nationalised Banks. With minor modifications or changes as may be necessary with regard to the peculiar conditions of the bank concerned, the said Regulations have been adopted by each and every nationalised bank. These Regulations have been framed in exercise of the powers conferred u/s 19 read with Sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970). The Regulations have come into force from July 1, 1979.

5. In order to understand and resolve the controversy between the parties, it is necessary to understand the Scheme of the Regulations. The Regulations apply to all officers of the Bank as provided in Regulation 2. With regard to the applicability of the Regulations there is no dispute between the parties. The Regulations have come into force from the appointed date, i.e. July 1, 1979. The Regulation contemplates four grades with the scale of pay specified against each of the grades as follows:

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

(a) Top executive grade Scale VII Rs. 3000-125-3500 Scale VI Rs. 2750-125-3250 (b) Senior management grade Scale V Rs. 2500-100-2700 Scale IV Rs. 2000-100-2400 (c) Middle management grade Scale III Rs. 1800-75 -2250 Scale II Rs. 1200-70-1550-75-2000 (d) Junior management grade Scale I Rs. 700-40-900-50-1100-EB-1200 -60-1800.

It would be clear that, as far as the junior management grade is concerned, there is only one scale while the scale in top, senior and middle management grades have again been divided into two pay scales. As per the provisions of Regulation 4(2), the Bank is not required to have officers in all the aforesaid grades at all times. It may be that at a particular point of time the Bank may not have officers in a particular grade at all. This is what is contemplated by Regulation 4(2).

6. In substance the Scheme of Regulation, in so far as it is relevant for the purposes of this petition, is to be found in Chapter II and Chapter III of the Regulations and in some of the provisions of Chapter IV i.e. Regulations 14 and 17. As far as the question of categoris sation and fitment is concerned, the Scheme appears to be like this:

(1) Standardise the grades (Regulation 4);

(2) Categorise the posts as on appointed date (Regulation 7);

(3) If necessary, make suitable changes in categorisation of posts as on appointed date (1-7-1979) so as to bring it in conformity with the provisions of Regulation 6. This is required to be done within a period of two years from the appointed date and it is to be made effective from the same date (i.e. 1-7-1979) (Regulation 6(1) proviso);

(4) May make further categorisation or review the categorisation already made as and when necessary. But this is not to be as on the appointed date, i.e. 1-7-1979 (Regulation 6(1);

(5) For the purposes of fitment of officers, in accordance with categorisation of posts as on 1-7-1979, pass fitment orders or give intimation with regard to fitment to be effective from appointed date, i.e. 1-7-1979 (Regulation 8);

(6) Make adjustments in respect of different allowances and increments wherever necessary (Regulations 9, 10 and II);

(7) Give options - an officer may continue in the erstwhile scale applicable to him before the appointed date, i.e. 1-7-1979 but the option is made limited for a period, i.e. up to a period till an officer gets promoted in the higher scale than the scale to which he would have been otherwise entitled to (Regulation 12); and (81 If any officer is aggrieved as to his fitment, he may prefer an appeal to the Committee constituted by the Board for the purpose. The decision as to fitment may even be taken in review suo motu by the Board (Regulation 13);

This in short is the Scheme and provisions for the purposes of standardisation and giving equalisations to the officers concerned. This provision does not provide for any promotion or granting of higher scales. The main object of the provision is to see that there is proper standardisation and after achieving that object, the next step required to be taken is to see that the posts are categorised and then the officers holding the post as on 1-7-1979, are so fitted that they are not put to any disadvantage. The Regulation takes care of the fact that the officer when fitted in a new scale does not stand to lose because the idea is to standardise and make equalisation. The main Object behind this provision is not to grant higher pay or more benefits in any way.

7. For the present it is not necessary to deal with the provisions relating to

promotion contained in Regulations 14 and 17. Later on it would be necessary to refer to the provisions of Regulations 6 and 7. Therefore let us reproduce the same hereinbelow:

6(1). Having regard to the responsibilities and functions exercisable, every post of an officer in the Bank shall be categorised by the Board or any authority specified by the Board in this behalf as falling in any one of grades or scales mentioned in regulation 4 and such categorisation may be reviewed by the Board or such authority.

Provided that the categorisation of the posts in existence on the appointed date shall be done before the expiry of two years from that date in accordance with guidelines of the Government, if any, and shall in respect of the posts in the senior management and to executive grades be done by a committee of the Managing Director and such other persons as may be appointed by the Government for the purpose.

(2) For the purpose of categorisation of posts under Sub-regulation (1) every branch of the Bank shall be classified by the Bank, in accordance with criteria to be approved by the Government, as small, medium, large or exceptionally large category.

Regulation 7 as it stood prior to amendment reads as follows:

7. Subject to the provisions of regulation 6, the various posts of officers in the Bank on the appointed date shall be categorised as specified in the Table below:

TABLE POSTS GRADE IN WHICH PLACED General Manager Top Executive Grade Scale VII Joint General Manager Top Executive Grade Deputy General Managers Scale VI Assistant General Managers Senior Management Grade Scale V Regional Managers/ Senior Management Grade Chief Officers/ Scale IV Personnel Manager/ Legal Manager/Manager of Business Development (Others in) Scale A Middle Management Grade i.e. Assistant Regional Scale III Manager/ Development Managers/Agricultural Specialists, etc. Scale B-e.g. Managers Middle Management Grade of large and medium sized Scale II branches etc. Scale ''C Junior Management Grade Scale 1

Provided that any difficulties and anomalies arising out of the above categorisation shall be referred to a Committee consisting of the Managing Director and such other persons as may be appointed by the Government for this purpose for its decision.

8. Regulation 7 as it stands after the amendment brought in force April, 1980:

7. Subject to the provisions of Regulation 6, the various posts of officers in the Bank on the appointed date shall be categorised as specified in the Table below:

TABLE POSTS GRADE IN WHICH PLACED General Manager Top Executive Grade Scale VII Joint General Manager/ Top Executive Grade Deputy General Managers Scale VI Assistant General Managers Senior Management Grade Scale V

Regional Managers/ Senior Management Grade Personnel Manager/ Scale IV Functional Head, i.e. All officers in existing Scale A Assistant Regional Managers/ Middle Management Grade Development Managers/ Scale III Officer-in-charge Branch Managers of Large Branches Scale ''B'' Middle Management Grade Scale II Scale ''C Junior Management Grade Scale I

Provided that any difficulties and anomalies arising out of the above categorisation shall be referred to a Committee consisting of the Managing Director and such other persons as may be appointed by the Government for this purpose for its decision.

9. Now the rival contentions of the parties may be examined. The petitioners have come before the Court with a prayer that the respondent-Bank be directed to make categorisation under the provisions of Regulation 6(1). According to the petitioners, the Bank has not made the obligatory categorisation as required under the provisions of Regulation 6. The petitioners contend that it was obligatory upon the Bank to make further categorisation as provided under Regulation 6 within a period of two years from the appointed date, i.e. 1-7-1979.

10. The petition was filed on July 14, 1981. The affidavit-in-reply appears to have been sworn on August 12, 1982 and filed sometime in the month of August 1982. After the affidavit-in-reply was filed, the petitioners filed a document Annexure I (page 141-143) which according to them was produced by the Bank before the Court at the time when the Bank appeared at the notice stage, i.e., before the matter was admitted. This has been produced on record along with the affidavit-in-rejoinder dated October 13, 1982. The petitioners contend that the Bank has laid down the principles of categorisation as mentioned in this document, i.e., Annexure I (page 141-143) but has not taken the further steps of passing fitment orders.

11. The petitioners proceeded on the footing that the term "categorisation" includes the following steps:

(1) Evaluation of principles for the purpose of categorisation of posts;

(2) Classification of branches and posts; and

(3) Placement and fitment of officers in the respective scales.

When the petition was filed, this was the meaning in the mind of the petitioners as far as the term "categorisation" was concerned. At the time of hearing it was fairly conceded that in view of the provisions of the Regulations and particularly the provisions of Regulation 8, the term "categorisation" would not include "fitment" also. During the course of hearing of the petition, more than twice it was conceded that in view of the document produced at Annexure I (page 141-143) it would not be necessary to give direction to the Bank for making further categorisation. However, after the arguments of the respondent-Bank, it was submitted by the Counsel for the petitioners that he should not be held bound by concessions made earlier. This state of affairs makes it clear that at the stage when the petition was filed there was lot of confusion in the minds of the petitioners. Unfortunately this confusion got confounded instead of being cleared as the hearing Proceeded further and the same persisted till the end.

12. All this confusion has arisen in view of the fact that the averments made in the affidavit-in-reply and particularly in paragraphas 40, 41 and 42 were not closely read and analysed at the proper time. It was the case of the Bank that categorisation as required under proviso to Regulation 6(1) for the existing posts as on appointed date has already been done. The Bank has taken the position in the affidavit-in-reply as well as at the stage of the argument that the categorisation made as per Regulation 7 was preliminary. A further exercise of categorisation was required to be taken as per the provisions of proviso to Regulation 6(1). The respondent-Bank came with a specific case that this exercise has been taken by the Bank. However, it appears that the petitioners did not notice this aspect, probably on account of the fact that in the affidavit-in-reply necessary particulars with regard to the dates were not given. The Counsel for the respondent-Bank was requested to give the necessary particulars with regard to the dates on which certain steps were taken by the Bank. In para 40 of the affidavit-in-reply it is specifically stated that further or final categorisation as required under proviso to Regulation 6(1) as on appointed date was done even with regard to the posts carrying Scale I, II and III. It was clarified that categorisation with regard to Scale III was made in the month of November 1979 and again it was made on March 19, 1980. With respect to Scale II posts categorisation as on 1-7-1979 was made on May 3, 1980. With respect to the Scale II and III posts further categorisation on July 10, 1980 was made at the suggestion or at the request of Federation of Officers of Bank. The stand taken by the Bank is that the categorisation which is reflected in Annexure I (page 141-143) is not as required under proviso to Regulation 6(1) but it is under the main provisions of Regulation 6(1) itself.

13. At this stage we may refer to the provisions of Regulation 6(1). Regulation 6(1) does not refer to categorisation of posts existing as on 1-7-79. Categorisation as on 1-7-79 is required to be done within two years from the appointed date in terms of proviso to Regulation 6(1). Thus the position which emerges is that the categorisation of posts existing on 1-7-79 has to take place twice; first it is done by virtue of the provisions of Regulation i. e.. Regulation 7. This is subject to the provisions of Regulation 6, meaning thereby, it should conform with the provision of Regulation 6. However, proviso to Regulation 6(1) makes it obligatory that the posts in existence on 1-7-79 be categorised within a period of two years from that date in accordance with the guidelines of the Government if any. Thus categorisation under Regulation 6(1) main provision and categorisation under proviso to Regulation 6(1) are altogether two different events or two different exercises. If one reads the provisions of Regulations 6 & 7 together, the categorisation of the posts existing on 1-7-79 takes place or has to take place twice; once it takes place immediately with the enforcement of the Regulations on appointed date, i. e. 1-7-79 as per Regulation 7. Another

categorisation of posts existing on 1-7-79 by the authority mentioned in proviso to Regulation 6(1) should be made in accordance with the guidelines of the Government if any within a period of two years from the appointed date.

14. One thing is clear that as far as categorisation under the main provision of Regulation 6(1) is concerned, it has no reference to the appointed date. This categorisation under main provision of Regulation 6(1) is again subject to review by the Board or by any authority as may be specified by the Board. Thus it appears clear that as per the provisions of Regulation 6(1) the authority specified in the Regulation can make categorisation even after categorisation exercise under proviso to Regulation 6(1) has been carried out, which is deligatory and has to be done within two years from the appointed date and it has to be given effect from appointed date (i.e. 1-7-79).

This appears to be the only proper construction. Had it not been so, then there is no other provision which empowers the Bank to categorise the post after categorising the post existing on the appointed date. After the appointed date, in normal circumstances of the banking industry, there is bound to be change in the business of the Bank and in the volume of overall transactions. There may be expansion of the branches. It may be that some of the branches which may be large or exceptionally large, may lose their business and get shrunk. Some of the small branches may expand and become large branches. Therefore, normally there should be some provision which would empower the Bank or some authority to make further categorisation of the posts in banks after the appointed date. This is the only provision which gives this power. If this provision is not construed to empower the bank to make categorisation even after the exercise of categorisation under proviso to Regulation 6(1), then this provision becomes almost redundant.

15. It is not even the case of the petitioners that once the categorisation under the provisions of proviso to Regulation 6(1) is made, the Bank has no power to make further categorisation in terms of the main provisions of Regulation 6(1). The petitioners have proceeded on the footing that what has been done as per Annexure I (Page 141-143) is as per the provisions of proviso to Regulation 6(1). Therefore the petitioners contend that categorisation at Annexure I (Page 141-143) is to be considered as the categorisation required to be made by the Bank again as on the appointed date. This contention is based firstly on account of the misconception with which the petitioners started, i.e. with regard to the meaning of the term ''categorisation''. Secondly failure to grasp properly the import of the averments made in paragraphs 40, 41 & 42 of the affidavit-in-reply.

16. True, the respondent-Bank has not specified the date and has not made it explicitly clear that the categorisation (referred to in para 40) was as required under the proviso to Regulation 6(1). In view of the aforesaid ambiguity the Counsel for the petitioners requested that the Bank should be directed to produce the documents by which the categorisation referred to in paragraph 40 onwards is made. In other words, the contention is that the averments made in

affidavit-in-reply should not be accepted and the Bank should be called upon to produce the documents and the Court itself should examine the documents and come to the conclusion as to whether the categorisation made, as contended by the Bank, is legal and proper or not or can it be said to be categorisation at all ? This request may be examined.

17. To embark upon the examination of categorisation done by the Bank would amount to entertaining a challenge to the categorisation itself. In the entire petition there is no challenge to the categorisation made by the Bank. As stated earlier, the confusion had persisted to the extent that more than twice the Counsel for the petitioners even conceded that in view of Annexure I (page 141-143) relief in terms of para 19(A) second direction to make categorisation) was not required to be granted at all. Moreover, there is nothing in the petition to indicate as to on what basis the categorisation made by the Bank, as averred in paragraphs 40,41 and 42 of the affidavit-in-reply is illegal and bad. Categorisation may be held to be illegal or invalid if it is not in conformity with the provisions of law or if it is shown that it has been done in such an unreasonable and perverse manner that no reasonable person would do it. Had there been enough material on record, I might have ventured to embark upon this expedition also. But it is a fact that there is no such challenge and there is no such averment in the petition. As a matter of fact, the petitioner? never thought that the categorisation as required under proviso to Regulation 6(1) has already been made and it was required to be challenged. It may be that the categorisation made by the Bank may be subject to some criticism. There may be some impropriety or illegality or that it may be prefectly in accordance with law. But that not being the subject matter of the petition. I feel proper not to make any further observation in this regard lest it may come in the way of either the respondent-Bank or the petitioners in future.

18. In above view of the matter, the request of the petitioners to call for the relevant documents pertaining to the categorisation made by the Bank under proviso to Regulation 6(1) cannot be accepted.. Doing so would amount to crossing the limits of the scope of this petition. The respondent-Bank has never been called upon to answer such allegation. Therefore in the absence of necessary averment and in. the absence of any prayer challenging the categorisation, it would not be proper for me to call for the documents as prayed for and to examine the same for the purpose of finding out as to whether categorisation made by the Bank as required under proviso to Regulation, 6(1) is legal and valid or not.

19. For another reason also it would not be proper for me to call for the documents and examine the same. It may be that some other persons may be interested in this subject matter, i.e., the subject matter of the legality and validity of the categorisation. They may have filed such petition or might be contemplating to file such petitions in future. If 1 deal with the aforesaid contentions in this petition which does not contain prayer and adequate material

in this behalf it may affect such other persons also. Therefore on that ground also it would not be proper for me to embark upon this expedition.

20. It was contended that the petitioners were labouring under misconception as to the meaning of the term "categorisation". According to the petitioners, this being a genuine misunderstanding and that even the Bank was labouring under this misconception, the Bank should be called upon to produce the documents as stated above. This contention has been objected to by the Counsel for the respondent-Bank. According to the Counsel for the respondent-Bank, the Bank was never under misconception regarding the meaning of the term "categorisation". The Bank has made its stand very clear in paragraphs 40,41 and 42 of the affidavit-in-reply and also in paragraph 13 of the affidavit sworn on November 25. 1982 wherein it is made clear that reference to Annexure I (pages 141-143) was not relevant and the same referred to categorisation of posts as on January 30, 1980. It is further stated that the fitment is entirely a different thing from categorisation of posts and it was alleged that the petitioners were confusing the issues involved in the matter. In this view of the matter, it cannot be said that the respondent-Bank was also labouring under the same mistaken concept of the term "categorisation". Therefore the prayer cannot be granted as it would amount to causing prejudice to the respondent-Bank.

21. It was sought to be contended by the petitioners on the basis of averments made in affidavit filed on July 7, 1983 that, if the categorisation made by the Bank is allowed to continue, about 287 officers in Scale II would get stagnated on account of the consequential fitment of the officers in the new scales. On this basis it was sought to be contended that the fitment made by the respondent-Bank is erroneous and the Bank should be directed to make fitment as per the principles laid down in Annexure I (page 141-143). The argument has its roots in the misconception with regard to the purpose of standardisation of grade and granting equalisation to the officer concerned. By the provisions of Regulations 6, 7 and 8, what is sought to be done is that the post of an officer is to be categorised. Thereafter the officer concerned is to be fitted in proper scale. He is required to be so fitted that he does not stand to lose. Similarly on account of such fitment he has no right to claim further benefits. He can claim equivalence. In the process of equalisation, if there is any cause of grievance to him, the Regulation itself takes care to make suitable adjustments as per the provisions of Regulations 9, 10 and II. If an officer feels aggrieved, he has a right of appeal against the order of fitment. Therefore there is no force or merit in the argument that since 287 officers may get stagnated in Scale II, the categorisation should be held to be bad.

22. The aforesaid argument may be examined from yet another angle. Had there not been such equalisation as provided under the Regulations, what would have been the position of 287 officers on 1-7-1979, who, according to the petitioners, are likely to get stagnated on account of categorisation made by the Bank. Even in the old grade and scales, they might have got stagnated. No material is placed

on record to show that in the erstwhile grade and scales they would not have got stagnated. In erstwhile grade and scale (prior to 1-7-1979), if they were likely to get stagnated, they would not have been in a position to claim higher scales of pay. There is no provision in the regulation that, because an officer is likely to get stagnated on account of categorisation and fitment in the new scale of pay, he should be fitted in higher scale of pay than to which he would have been otherwise entitled to. Therefore, this argument being not relevant cannot be accepted.

23. It is the contention of the Bank that after the initial or preliminary categorisation under Regulation 7, further modifications have been made in pursuance of the recommendations of Gutta Committee. The said Committee was appointed by the Government under the provisions of Regulations 6 and 7. The change effected was with respect to Scale IV to Scale VII. To be more precise, the change effected was with regard to erstwhile grade ''A'' officers falling in new Scale IV and Scale III. Some erstwhile officers who were in Scale III were pushed up in Scale IV. As far as categorisation of posts held by erstwhile Grade ''B'' and ''C officers are concerned, there was no change. Prior to amendment posts of erstwhile Grade ''B'' officers were placed in Middle Management Grade Scale II and the post of erstwhile Grade ''C officers were placed in junior Management Grade Scale 1. After the amendment also, as far as the posts held by erstwhile Grade ''B'' officers and erstwhile Grade ''C officers are concerned, the position remained the same. In this view of the matter, there was no need to issue any fresh fitment order in respect of the posts held by erstwhile Grade ''B'' and ''C officers.

24. It was contended that on account of the aforesaid amendment in Regulation 7, which was brought about pursuant to the recommendations of the Gutta Committee submitted on December 19, 1979, categorisation with respect to Grade ''A'' officers was changed. It is the contention of the Bank that none of the petitioners-officers was holding the post of:

(1) Assistant Regional Manager,

(2) Development Manager,

(3) Officer-in-Charge, and

(4) Branch Manager of large branch.

These posts have been placed in Middle Management Grade Scale III. It appears that on account of the amendment as stated above, erstwhile Grade ''A'' officers holding the aforesaid posts were pushed up in Scale IV. It also appears that these posts were considered vacant as on 1-7-1979 by the respondent-Bank. As many as 230 officers out of the total 430 officers in erstwhile Grade ''B'' were promoted to the new Scale III some time in August 1980. There is no challenge to the categorisation as made by amendment, meaning thereby the categorisation by which all the erstwhile Grade ''A'' officers were placed in Scale

IV by virtue of the amendment.

25. Then the question is, could the Bank have treated all the posts as vacant on 1-7-1979, i.e., appointed date, which were placed in Middle Management Grade Scale III. Reliance is placed by the Bank on the provisions of Regulation 4(2) which provides that nothing contained in sub-regulation (1) which prescribes different grades and scale for officers shall be construed as requiring the Bank to have at all times officers serving in all these grades. Probably relying on this provision the Bank has proceeded further and treated the posts described against Middle Management Grade Scale III as vacant on 1-7-1979. Thereafter the Bank promoted as many as 230 Grade ''B'' officers who were entitled to Middle Management Grade II and who were fitted as such as per Regulation. This has been done by the Bank some time in August 1980. The petition is filed on July 14, 1981. There is no challenge to the aforesaid action of the Bank in this petition. Whether the action of the Bank to treat the posts described against Management Grade Scale III, i.e., the posts of Assistant Regional Managers, Development Managers, Officer-in-Charge and Branch Managers of large branches, as vacant on 1-7-1979 and then to promote erstwhile Grade ''B'' officers to Middle Management Grade Scale III is legal and proper or not is not a question before me and therefore I do not think it proper to examine the same.

26. This takes us to the second prayer of the petitioners i.e. prayer in para 19 (B). It is prayed that the respondent-Bank be directed to categorise the petitioners and similarly situated officers as mentioned in Annexure "H" as on the appointed date and give them all benefits on that basis and to effect their promotions on that basis. It was submitted and clarified by the Counsel for the petitioners that by seeking direction to categorise, the petitioners claim fitment as per Annexure "H". It may be noted that there is no averment in the petition that the petitioners were holding the posts (as on appointed date, i.e. 1-7-1979) which are not described against Middle Management Grade Scale III. It is also not mentioned that if not the petitioners, who are the other persons from amongst the erstwhile Grade ''B'' officers who were holding such posts on 1-7-1979. Similarly in respect of erstwhile Grade ''C officers also, necessary particulars are not given, It is an undisputed fact that the petitioners Nos. 1 to 9 were officers in erstwhile Grade ''C and petitioners Nos. 10 to 12 were officers in erstwhile Grade ''B''. As per Regulation 7 prior to amendment as well as subsequent to amendment, the posts held by erstwhile Grade ''B'' officers are placed in Middle Management Grade Scale II while the posts held by erstwhile Grade ''C officers are placed in Junior Management Grade Scale 1. There is no challenge to the Regulations, meaning thereby, it is not the contention of the petitioners that the categorisation under Regulation 7 is bad. No basis for the same is made out in the petition. Therefore, on this short ground alone this prayer has to be rejected.

27. However, in order to avoid controversy, the contention of the petitioners that after categorisation as per Annexure I (Page 141-143) dated 17-6-1981, the

Bank is required to pass fresh fitment orders, may be examined. This contention has its roots in a misconception that the categorisation reflected in Annexure I (Page 141-143) is as required under proviso to Regulation 6(1). The fresh fitment orders will be required to be passed only when the categorisation under proviso to Regulation 6(1) is different than what it might have been at the initial stage when Regulation 7 was introduced. As stated hereinabove, the main provision of Regulation 6(1) empowers the Bank to make categorisation periodically. Or, to put it more specifically, it empowers the Board of the respondent Bank to review the categorisation periodically. The categorisation of the existing posts as on 1-7-79 is done once at the initial stage when the Regulations have been brought into force. That is by virtue of Regulation 7. This is subject to the provisions of Regulation 6. Therefore in terms of the proviso to Regulation 6(1), fresh categorisation exercise is necessary. If the subsequent categorisation as required under proviso to Regulation 6(1) is not different, then what it was at the initial stage; (that is categorisation as per Regulation 7), then no fresh fitment orders are required to be passed in respect of the persons regarding whom there is no change. It may be noted that the stand of the Bank is that the categorisation was altered as per the recommendations of the Gutta Committee appointed by the Government and that change related to only the erstwhile Grade ''A'' officers who were splitted up and placed in two different scales, i.e. Scale IV and Scale III. The posts of officers which were placed in Scale III were all pushed up and placed in Scale IV. No other change whatsoever is brought about by the amendment. Therefore on this count, no fresh fitment orders were required to be passed in respect of the persons holding the posts of erstwhile Grade ''B'' and ''C'' officers.

28. Moreover, when the categorisation is done not as per proviso to Regulation 6(1), but it is done as per the main provisions of Regulation 6(1) there is no question of passing any fitment order whatsoever. The categorisation under Regulation 6(1) would take place after the equalisation process is over. It may be noted that there is an indication in the provisions that the equalisation process should come to an end within a reasonable period. This indication is given in the proviso itself. This provision makes it obligatory upon the appropriate authorities to make further categorisation within a period of two years. This categorisation may not be different, than that of the initial or preliminary categorisation done as per Regulation 7. In case wherever it is different necessary consequential fitment orders as required under the provisions of Regulation 8(1) will have to be passed by the Bank. If it is not different, no such orders are required to be passed.

29. Another indication to the effect that the equalisation process should come to an end within a reasonable period is to be found from the provisions of Regulation 12. This provision gives option to all the officers either to continue in the erstwhile Grade or to opt for the new grade and scales. The officer concerned is required to exercise this option within a period of 30 days from the date of receipt of the intimation regarding his fitment. Then again he can continue in the erstwhile grade only till he is promoted to a higher scale than the scale of pay to

which he would have been entitled to immediately before the appointed date. This is made clear by the proviso to Regulation 12(1).

30. Thus the entire Scheme of the relevant Regulations indicates:

(1) initially there will be standardisation of grades as per Regulation 4;

(2) there will be initial categorisation of posts as on appointed date (1-7-1979) as per Regulation 7;

(3) there shall be order of fitment under Regulation 8;

(4) the initial categorisation of posts as on appointed date (1-7-1979) under Regulation 7 is subject to Regulation 6. Therefore final categorisation of posts as on 1-7-1979 in terms of proviso to Regulation 6(1). This is to be done within two years from the appointed date;

(5) if categorisation of posts as on appointed date (1-7-1979) under proviso to Regulation 6(1) is different than the initial categorisation under Regulation 7, fresh orders of fitment under Regulation 8 may be necessary. If not, no fresh order of fitment is necessary; and

(6) there may be further categorisation of posts from time to time without having any reference to appointed date (1-7-1979) as per the main provision of Regulation 6(1).

31. As and when the categorisation of posts without any reference to Appointed date (1-7-1979) is done under Regulation 6(1) by the appropriate authority of the Bank, it is not necessary, nor it is permissible under the Regulations to pass fitment orders to the officers. Thereafter what may happen is that there may be orders of promotions. it may be noted that categorisation refers to posts. By the further categorisation under Regulation 6(1) only the posts will be categorised. it may be that in higher scale for example, instead of there being 100 posts, other additional 50 posts may also be categorised. in accordance with the promotion policy and Regulations, from amongst the eligible officers promotions will have to be made to these posts. There is no question of passing fitment orders in respect of these posts. The fitment of officers is to be done for the purposes of equalisation as on 1-7-1979. the appointed date. The subsequent categorisation of posts is not as on 1-7-1979. Therefore no officer can claim fitment to a post which is categorised subsequently under the main provision of Regulation 6(1) and not under the provision of Regulation 7 or under proviso to Regulation 6(1).

32. Now it may be examined whether the categorisation as reflected in Annexure I (page 141-143) is as per the proviso to Regulation 6(1) or it is as per the main provisions of Regulation 6(1). Both under Regulation 7 and under the proviso to Regulation 6(1) the posts existing on appointed date are required to be categorised on the appointed date i.e. 1-7-1979. The document Annexure I (page 141-143) clearly shows that the posts were categorised as on 31-12-1979. This has been clearly stated in paragraph 30 of the affidavit sworn by an officer

of the Bank on 25-11-1982. There is nothing in the document Annexure I (page 141-143) to show that the categorisation reflected therein is as per proviso to Regulation 6(1). On the contrary, as stated on behalf of the Bank in paras 40, 41 and 42 of the affidavit-in-reply, the categorisation of posts as on appointed date required to be done under proviso to Regulation 6(1) had been done by the Bank. As stated hereinabove, the relevant dates have been given by the Counsel for the respondent-Bank at the Bar. Therefore the contention that the Bank is required to pass fresh fitment orders after Annexure I (page 141-143) dated 17-6-1981 cannot be accepted and hence the same is rejected.

33. This takes us to the third prayer contained in para 19(C) of 19(C) of the petition. It is prayed that the respondent-Bank should be restrained from making promotions of the officers of the respondent-Bank without first effecting categorisation under Regulation 6(1). This prayer is also based under the same misconception that there was no categorisation as required under proviso to Regulation 6(1) when the petition was filed. In paragraphs 40, 41 and 42 of the affidavit-in-reply filed on behalf of the Bank it is made abundantly clear that after the initial categorisation brought about by virtue of the provisions of Regulation 7, further categorisation of posts as on appointed date as required under the proviso to Regulation 6(1) was made by the Bank. To repeat the particulars about dates were given by the Counsel for the respondent-Bank and reference to the same has been made hereinabove. Therefore the very basis of the prayer that categorisation has not been made as provided under proviso to Regulation 6(1) has no basis and therefore on this ground alone this prayer has got to be rejected.

34. This question may be examined even from the stand point of the petitioners. The petitioners contend that the promotions cannot be given pending categorisation under Regulation 6, inasmuch as the same would affect the availability of vacancies. Therefore, according to the petitioners, it would violate the guideline issued by the Government in terms of Regulation 17. Reliance is placed on guideline No. 2 which provides that subject to the availability of vacancies all promotions shall be made on the basis of merit, seniority, educational and professional qualifications, etc. It was therefore contended that if promotions are allowed pending categorisation and consequent fitment, eligible persons for being considered for promotion, will be different after the categorisation and fitment, and therefore some of the eligible persons may be left out of consideration. This argument cannot be accepted for the simple reason that there is nothing in the Regulations which precludes the Bank from making promotions pending categorisation under proviso to Regulation 6(1). In this connection the Counsel for the respondent-Bank has placed reliance on a Division Bench judgment (unreported) of the Patna High Court in Civil Writ Jurisdiction Case No. 2774 of 1981 decided on December 10, 1982. After referring to the relevant provisions with regard to the promotions i.e.. Regulations 14 and 17, it is observed as follows:

None of these Regulations made promotion dependant or subject to any other Regulation. The only limitation in relation to the exercise of power is contained in these two Regulations and that is that the guidelines of the Government have to be followed. In my view, therefore, the exercise of power of promotion is not dependant on the classification of the branches or categorisation as mentioned in Regulation 6. I have already said that the Regulations relating to promotion are not made subject to any other Regulation. Even the underlying object and the scheme of Service Regulations do not lead to the conclusion that the power to promote should be exercised only after the classification and categorisation as mentioned above.

I am in respectful agreement with the aforesaid decision of Patna High Court.

35. The Counsel for the petitioners tried to suggest that in that case no reason was advanced to show that promotions would adversely affect the officers of the Bank or that complete justice would not be done. It was submitted that since Guideline No. 2 would be violated and since eligible persons will be different after the categorisation and fitment, it would prejudicially affect the officers concerned.

36. The distinction sought to be made has its roots in the misconception ''regard to the correct meaning and interpretation of the provisions contained in Regulations 4 to 6. These Regulations provide for equalisation only. It may be that the classification and categorisation as envisaged under proviso to Regulation 6(1) may take place even after a period of two years or even more.

37. When such categorisation takes place it is to be done on the basis of the posts existing on the appointed date, i.e. 1-7-1979. The consequent fitment is also to be given effect from 1-7-1979. Therefore when an officer is fitted in a higher scale later on, the basis of categorisation of posts as on appointed date (1-7-1979), he will have to be fitted in that higher scale with effect from 1-7-1979. Therefore it is clear that these provisions relate to standardisation of grades and granting of equalisation to the officer concerned with regard to the post held by him as on 1-7-1979. If there is any mistaken fitment with respect to a particular officer, he would be entitled to the benefit of equalisation With effect from 1-7-1979. He may also be entitled to further benefit! which may flow from such equalisation brought about later on, account of further categorisation of posts existing as on appointed date (1-7-1979 under proviso to Regulation 6(1). What is sought to be done as per the provisions of these Regulations, i.e. Regulations 4 to 8, is to standardise the grade, categorise the posts and give equalisation. Neither the Regulations provide, nor the Bank is permitted to do anything else under these provisions by which any officer may be promoted to a higher scale. Therefore there is no question of any of the posts being filled in by any other officer who may be promoted to a higher scale pending categorisation. Hence, on the basis of the interpretation of the entire Scheme and the Regulations and on the basis of the decision of the Division Bench of Patna High Court referred to hereinabove, this argument advanced by the petitioners cannot be accepted.

38. The applications being Civil Applications Nos. 4806, 4809 and 4850 of 1983, submitted by the Counsel for the petitioners seeking different prayers are being rejected for the reasons stated below each of the civil application.

39. As and when the time permitted, after the admission work was over, the judgment has been dictated in open Court on December 14, 15 and 16, 1983. All the contentions which appeared to be relevant and necessary for the purposes of the decision of the disputes involved in the petition have been dealt with. Either side has not stated that any of the contentions raised by them is left out and is required to be dealt with by the Court. No other contention is raised which requires to be decided. In the result the petition fails and is ordered to be rejected. Rule discharged with no order as to costs.

40. Counsel for the petitioner states that by way of interim relief it was directed that all promotions to Scale II and III posts, pursuant to the Promotion Policy, shall be provisional and subject to the result of the petition. The Counsel for the petitioner requests that the said interim relief be continued for a further period of three months from today. The aforesaid interim relief was granted on July 23, 1981 and the same has continued till today, i.e. for a period of about 2 1/2 years. Therefore if the same interim relief is continued for a further period of three months, there should not be any difficulty for the respondent-Bank. Hence the request of the Counsel for the petitioners is granted. Therefore, it is directed that the interim relief granted by the Court on July 23, 1981 to continue up to February 29, 1984.