New Bank of India Employees Union and another

Vs

Union of India and Others

Civil Appeals Nos. 4247-50 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

13.03.1996

JUDGEMENT

PATTANAIK, J. :-

1.Leave granted.

2. These four appeals by way of Special Leave deal with one and the same scheme of amalgamation of the New Bank of India (hereinafter called as the Transferor Bank) with the Punjab National Bank (hereinafter called the "Transferee Bank"). The employees of the Transferor Bank filed Writ Petitions, one by the officers and another by the workmen challenging clause 4(a) (iii) and clause 4 (b) (ii) of the Scheme dated 8th December, 1993 called the New Bank of India (Determination of Placement of Employee (Officers and Workmen) of the New Bank of India in Punjab National Bank) Scheme, 1993 (hereinafter called the "Placement Scheme"). The aforesaid scheme had been framed by the Government of India in exercise of the powers conferred by Section 9 of the Banking Companies (Acquisition and Transfer of Undertaking Act 1980) (hereinafter referred to as "the Acquisition Act"). The employees of the Transferee Bank also filed Writ Petitions in the High Court of Punjab & Haryana challenging the Placement Scheme on the ground that the seniority of the employees of the Transferee Bank has been altered to their disadvantage on account of the principle of seniority indicated in the Placement Scheme and the said Scheme is arbitrary and violative of Article 14 of the Constitution of India. The Division Bench of the Punjab & Haryana High Court dismissed all the Writ Petitions and upheld the provisions of the Placement Scheme and hence these appeals by the Workmen and Officers of the Transferor Bank as well as by the employees of the Transferee Bank.

3. Under the provisions of the Acquisition Act of 1980, 14 Banks in the country were nationalised including the Transferee Bank. The New Bank of India Limited was a Private Bank which was taken over by the Central Government under the provisions of the Acquisition Act of 1980 on 15-4-1980. The said New Bank of India incurred financial loss to such an extent and its financial position was so unsatisfactory that its capital and deposits completely stood eroded and the Bank declared a loss of Rs. 11.52 crores in the year 1991-92. The Reserve Bank of India which is the monitoring authority and advisor to the Government of India, on consideration of the financial position of the New Bank of India suggested that it would subserve public interest if the said New Bank of India is merged with another stronger Nationalised Bank. The Government of India finally decided to exercise the powers under Section 9 of the Acquisition Act and in consultation with the Reserve Bank of India decided to amalgamate the Transferor Bank with the Transferee Bank and for the aforesaid purpose brought into existence a Scheme dated 4th September, 1993 called the New Bank of India (Amalgamation and Transfer of Undertaking) Scheme 1993 (hereinafter called "The

Amalgamation Scheme"). Under the aforesaid Amalgamation Scheme, the undertakings of the Transferor Bank stood transferred to and vested in the Transferee Bank and the effect of such vesting was that all assets, rights, powers, authorities and privileges and all property movable and immovable, cash balance, capital reserve funds, investments and all other rights and interests in, or arising out of such property as were immediately before the commencement of the Scheme in the ownership, possession, power or control of the transferor bank in relation to the undertakings, whether within or outside India and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the transferor bank in relation to the undertakings deemed to have been transferred to and vested in the transferee bank. Clause 4 of the aforesaid Amalgamation Scheme is extracted hereinbelow in extenso :-

4. General effect of vesting :-

> (1) The undertakings of the transferor bank shall be deemed to include all assets, rights, powers authorities and privileges and all property, movable and immovable, cash balances, capital reserve funds, investments and all other rights and interests in, or arising out of; such property as were immediately before the commencement of this Scheme in the ownership, possession, power or control of the transferor bank in relation to the undertakings. Whether within or outside India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the transferor bank in relation to the undertakings.
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> (2) Where any property is held by the transferor bank under any lease the transferee bank shall on and from the date of commencement of this scheme be deemed to have become the lessee in respect of such property as if the lease in relation to such property had been granted to the transferee bank and thereupon all the rights under such lease shall be deemed to have been transferred to, and vested in, the transferee bank;
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> Provided that on the expiry of the term of any lease referred to in this sub-clause such lease shall, if so desired by the transferee bank, be renewed on the same terms and conditions on which the lease was held by the transferor bank immediately before the date of commencement of this Scheme."
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> Under clause 5 of the said Amalgamation Scheme the Board of Directors of the Transferor Bank stood dissolved and the officers and employees of the Transferor Bank became the officer and employee of the Transferee Bank on the same terms and conditions with the same rights to pension, gratuity and other matters as would have been admissible to those employees if the undertakings of the transferor bank had not been transferred to and vested in the transferee bank subject to those facilities being available at the time of the transfer to the similarly placed employee of the transferee bank.

4. Clause 5(4) of the aforesaid Amalgamation Scheme authorities the Central Bank to make another scheme in consultation with the Reserve Bank of India for determining the placement of the employees of the transferor bank including the determination of their inter-se seniority vis-a-vis the

employees of the transferee bank. The aforesaid Clause 5(4) of the Amalgamation Scheme is extracted in extenso :-

> "5(4) The Central Government shall as soon as possible after the commencement of this Scheme, make a Scheme in consulation with Reserve Bank of India for determining the placement of the employees of the transferor bank including the determination of their inter-se seniority vis-a-vis the employees of the transferee bank. While making the Scheme the Central Government shall take account of relevant factors such as experience of the employee of the transferor bank."

5. In exercise of the aforesaid power conferred upon the Central Government under Clause 5(4) of the Amalgamation Scheme read with Section 9 of the Acquisition Act the Central Government did frame the Placement Scheme on 8th December, 1993 the legality of which had been challenged both by the employees of the Transferor Bank as well as the employees of the Transferee Bank.

6. Clause 1(2) of the Placement Scheme stipulates that the Scheme shall be deemed to have come into force with effect from 4th September, 1993.

7. Clause 4 of the aforesaid Placement Scheme deals with the seniority of officers and employees of the Transferor Bank vis-a-vis employees of the Transferee Bank.

8. Clause 4(a) (iii) of the Placement Scheme deals with the procedure for computation of years of service rendered in the transferor bank for the purpose of determining the minimum length of service for promotion from subordinate cadre to clerical cadre in the transferee bank and Clause 4 (b) (ii) provides the guidelines for the determination of seniority on fitment or for promotion to the next grade of scale of an officer of the transferor bank in the transferee bank. Since both these provisions have been challenged by the employees and officers of the transferor bank as well as the employees of the transferee bank it would be worth while to extract the aforesaid provisions in extenso :-

> "4(a)(iii) The procedue for computation of years of service rendered in the transferor bank for the purpose of determining the minimum length of service for promotion from subordinate cadre to clerical cadre as also from the clerical cadre to officer cadre and also for the purpose of posting in the posts carrying special allowance, shall be computed in the ratio 2:1, that is, two years of service in transferor bank as equivalent to one year of service in the transferee bank. For this purpose total service in the respective cadre of the Workmen employees, that is clerical of sub-staff in which the official is placed at the time of transfer, shall be reckoned but fractions of a month shall be ignored, for example if a workman employee has rendered two years and nine months service in the clerical sub-staff cadre, as the case may be, in the transferor bank at the time of amalgamation with transferee bank, it shall be rendered as equal to one year and four months service in the clerical or sub-staff cadre, as the case may be, in the transferee bank.
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> 4(b) (ii) For the purpose of seniority on fitment or for promotion to the next grade or scale, the service rendered by an officer in the transferor bank shall be computed, after amalgamation in the ratio of 2:1, that is, two years of service in the transferor bank as equivalent to one year service in the transferee bank. For this purpose, total service in the scale in which an officer is transferred shall be reckoned but fractions

of a month shall be ignored. For example if an officer has rendered two years nine months service in Scale-11 in the transferor bank at the time of amalgamation with the transferee bank, it shall be reckoned as equal to one year and four months service in Scale-11 in the transferee bank."

9. The Division Bench of the High Court came to the conclusion that;

(i) The Scheme making process under Section 9 of the Acquisition Act is not legislative in nature and, therefore, the placement scheme is not law.

(ii) The power under Section 9 of the Acquisition Act is wide enough to amalgamate the New Bank (The Transferor Bank) with any another banking institution including the one taken over under the Acquisition Act of 1970.

(iii) Once the Central Government has the power to amalgamate the Transferor Bank with the Transferee Bank it has to provide for the initial placement of the employees and the scheme framed for the purpose cannot be said to be without jurisdiction.

(iv) The placement scheme does not interrupt services of the employees of the transferor bank nor does it alter their terms and conditions of employees to their prejudice;

(v) The Placement Scheme providing for the services of the employees of the transferor bank in the respective cadre at the time of merger in the transferee bank to be counted in the ratio of 2:1 cannot be said to be discriminatory when the profitivity in terms of business of the two banks the volume of business handled by the employees of the two banks, the promotion effected in scales 3 to 7 by the New Bank of India just before its merger with the Punjab National Bank, the rate of promotion of the employees in the two banks when compared are taken into account. The High Court also came to the conclusion that on account of acute financial position of the transferor bank when it was open to the Central Government to close down the bank, the Government in consulation with the Reserve Bank of India decided not to take the extreme steps of closing the bank and, on the other hand, decided to merge the same with the stronger Punjab National Bank, the scheme of amalgamation and placement has to be examined from the point of view of wider public interest and unless it is positively established that any clause thereof is arbitrary or irrational the Court should not interfere with the same.

10. Mr. P. P. Rao, the learned senior advocate appearing for the workmen of the transferor bank contended that Clause 5(4) of the Amalgamation Scheme authorises the Central Government to make a further scheme for determining the placement of the employees of the transferor bank as well as for determination of their inter se seniority vis-a-vis the employees of the transferee bank whereas Clause 4 (a) (iii) of the Placement Scheme provides the procedure for computation of years of service rendered in the transferor bank for the purpose of determining the minimum length of service for promotion from subordinate cadre to the clerical cadre as also from clerical cadre to the officer cadre which is beyond the competence of the Central Government. In other words Mr. Rao contended that the promotion of an employee from one cadre to the other is condition of service of an employee which under Clause 5(2) of the Amalgamation Scheme could have been duly altered only by the transferee bank and the Central Government exceeded its jurisdiction in the garb of

determining the placement of the employees of the transferor bank as well as their inter se seniority in altering the condition of service. Mr. Rao further urged that even if Clause 5(4) of the Amalgamation Scheme would be held to authorise the Central Government to frame a scheme as provided in clause 4 (a) (iii) of the Placement Scheme but the same is vitiated since on relevant materials have been considered by the Central Government and there is no justification for fixing the ratio of 2:1 i.e. 2 years of service in the transferor bank is equivalent to one year of service in the transferee bank particularly when both the banks are nationalised banks and the recruitment of service in both the banks is through a process of selection by the Recruitment Board. According to Mr. Rao, the aforesaid computation in the ratio of 2:1 in Clause 4 (a) (iii) of the Placement Scheme is irrational and arbitrary and therefore, should be struck down. Mr. Rao lastly urged that in any view of the matter the retrospective operation of the scheme which came into force on 8th December, 1993 and was given retrospective effect with effect from 4th September, 1993 is on the face of it bad in law as by an executive order the conditions of service of an employee could not have been altered retrospectively.

11. Mr. Arora, the learned counsel appearing for the officers of the tranferor bank apart from reiterating the stand taken by Mr. Rao submitted that the factors which were given to be the relevant factors for the decision by the Government to reduce the seniority of the officers of the transferor bank as indicated in paragraph 6 of their counter affidavit filed before the High Court by no stretch of imagination can be considered to be germane factors and, therefore, the decision contained in Clause 4 (b) (ii) of the Placement Scheme must be struck down as irrational and arbitrary. He further contended that the merger of a small bank with a stronger bank cannot be held to be a ground for reducing the years of service of an employee of a transferor bank and such reduction of service is wholly arbitrary. Mr. Arora, learned counsel also contended that there has been no iota of material in the counter affidavit filed before the High Court that the rate of promotion was much faster in the transferor bank as compared to the transferee bank. And further the finding of the High Court that the officers of the transferee bank will be junior to the officers of the New Bank of India if the entire credit is given to the services rendered in the transferor bank is a finding based on no evidence. Learned Additional Solicitor General replying to the contentions raised by the learned counsel for the appellant submitted that the framing of the Amalgamation Scheme framed by the Central Government in exercise of power under Section 9 of the Acquisition Act had not brought in a total fusion and was in a transitory stage and Clause 5(4) of the said Amalgamation Scheme authorised the Central Government to make a scheme of placement in consultation with the Reserve Bank of India. The expression "Placement" in clause 5(4) of the Amalgamation Scheme conceives of fitment of an employee in a cadre or grade; position he occupies in the grade which in other words, would be his seniority, and redeployment of his service in the grade. The Placement Scheme framed by the Government more particularly Clause 4(a)(iii) as well as 4 (b) (ii) achieves the aforesaid objective and is squarely within the powers conferred upon the Central Government under Clause 5(4) of the Amalgamation Scheme. So far as the consideration which weighed with the Central Government to take the ratio of 2:1, learned Additional Solicitor General placed before us the relevant paragraphs of the counter affidavit of the Reserve Bank of India as well as the Union Government and also produced before us a chart indicating the impact of the ratio being 2:1 as well as the impact of if the entire service of an employee under transferor bank is taken into account and contended that if the latter course would have been taken then for years to come no employee of the Punjab National Bank, namely, the transferee bank would have got any opportunity of getting promotion to the higher cadre. He also further contended that when the Reserve Bank of India which monitors all these Nationalised Banks was consulted and the said Reserve Bank of India decided to have the ratio of 2:1 after considering several germane factors it cannot be said to be

arbitrary or irrational as contended by the learned counsel appearing for the appellants. Mr. Reddy learned Additional Solicitor General also contended that the provisions of Clause 4 (a) (iii) & 4 (b) (ii) is merely one time exercise and the said provision has been made after due consultation with the Reserve Bank of India and after taking into consideration several important factors, like, respective manpower of the two banks, respective tenurs of promotion in two banks, respective business of two banks and the fact that there has been a large scale promotion in the transferor bank just before the amalgamation. According to Mr. Reddy no scheme governing service matters can be foolproof and some section or other of the employee is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled as has been held by this Court in the case of V. T. Khanzode v. Reserve Bank of India (1982) 2 SCC 7 : (AIR 1982 SC 917). Therefore, unless the persons aggrieved establish arbitrariness, irrationality, perversity or mala fide the scheme cannot be held to be unconstitutional.

12. Mr. Reddy cited before us several decisions of this Court indicating the parameters for interference by the Court when validity of similar scheme is assailed and submitted that the impugned scheme more particularly clauses 4(a) (iii) & 4 (b) (ii) of the Placement Scheme infact strikes a just balance between the conflicting claims of the employees of the transferor bank and the employees of the transferee bank and the said provision can neither be held to be arbitrary and irrational and therefore the Court should not interfere with the same.

13. Mr. Reddy lastly submitted that the conclusion of the High Court that the scheme making process is not legislative in nature is wholly erroneous.

14. Mr. Salve, the learned senior counsel, appearing for the Reserve Bank of India contended that when the New Bank of India was sustaining loss and would have been otherwise wound up, the Reserve Bank of India advised the Union Government to merge the same with a stronger bank so that the employees will not suffer. While advising amalgamation the Reserve Bank of India also considered the relevant factors for determination of the inter se seniority of the employees and after due deliberations came to the conclusion of accepting the ratio of 2:1 at the stage of placement of promotion which advice was ultimately accepted by the Central Government. According to Mr. Salve all materials having been duly considered advice having been given to the Union Government which advice was ultimately accepted, the contentions of arbitrariness and irrationality raised by the counsel appearing for the appellants is nothing but an imaginary grievance and not established through any positive data and, therefore, the Court should refrain from interfering with the Amalgamation Scheme as well as the Placement Scheme more particularly the ratio of 2:1.

15. Mr. Sharma, the learned counsel appearing for the employees of the transferee bank on the other hand contended, that the Scheme works out harshly against the employees of the transferee bank and the benefits conferred upon the employees of the transferor bank under the Scheme should not be given to them.

16. In view of the rival submissions the following questions really arise for our consideration :-

> 1. Is the Placement Scheme framed by the Central Government which provides for the ratio of 2:1 for the purpose of promotion of the employees of the Transferor Bank is beyond the power of the Central Government as conferred under Clause 5(4) of the Amalgamation Scheme read with Section 9 of the Acquisition Act?
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> 2. What are the powers of the Court to examine such schemes and on what grounds

the Court can interfere with such a Scheme?

3. Whether framing the Placement Scheme and determining the ratio of 2:1 in Clauses 4 (a) (iii) and 4 (b) (ii), relevant and germane materials had been taken into account or the provisions can be held to be arbitrary and irrational?

4. Can the Placement Scheme by any stretch of imagination can be said to be retrospective in nature?

5. Was the High Court correct in coming to the conclusion that the scheme making process under Section 9 of the Acquisition Act is not legislative in nature?

17. So far as the first question is concerned Mr. Rao appearing for the appellants elaborated his submission by contending that no doubt Section 9 of the Acquisition Act confers power on the Central Government to make a scheme for Amalgamation of one bank with the other after consultation with the Reserve Bank of India and in exercise of that power the Central Government did frame the scheme of Amalgamation which was published on 4th September, 1993. Under the said Amalgamation Scheme the undertaking of the New Bank of India stood vested in Punjab National Bank on the commencement of the Scheme itself and the effect of such vesting has been indicated in Clause 4 of the Amalgamation Scheme. Under Clause 5(2) of the said Scheme the officer and employees of the transferor bank became officer and employees of the transferee bank and they shall hold their office or service in the transferee bank on the same terms and conditions and with the same rights, pension, gratuity and other matters as would have been admissible to him if the undertakings of the transferor bank had not been transferred to and vested in the transferee bank until the terms and conditions are duly altered by the transferee bank.

18. According to Mr. Rao the aforesaid provision makes it clear that the employees of the transferor bank would continue to be the employees of the transferee bank on the same terms and conditions which they were enjoying under their erstwhile employer, namely, the transferor bank, until and unless the terms and conditions are duly altered by the transferee bank. In that view of the matter the Union Government had no power to frame clauses 4(a) (iii) & 4 (b) (ii) of the placement scheme and thereby jeopardise the chances of promotion of the employees of the transferor bank in the transferee bank to their detriment and altering their conditions of service. According to Mr. Rao promotion and seniority are two different concepts and Clause 5(4) of the Amalgamation Scheme had merely authorised the Central Government to make another Scheme, a subsidiary one after consultation with the Reserve Bank of India for determining the placement of the employees of the transferor bank and for determining their inter se seniority vis-a-vis the employees of the transferee bank. Promotion by no stretch of imagination can be included within the purview of Clause 5(4) of the Amalgamation Scheme. In this view of the matter the impugned clause of the Placement Scheme, namely, Clause 4 (a) (iii) & 4 (b) (ii) computing the ratio of 2:1 for the purpose of determining the minimum length of service for promotion from subordinate cadre to clerical cadre and also from clerical cadre to officer cadre is wholly without jurisdiction and an arbitrary exercise of power by the Central Government. Mr. Rao contends that the right of promotion of the employees of the tranferor bank remains fully protected under Clause 5(2) of the Amalgamation Scheme and it can only be duly altered by the transferee bank and that right cannot be taken away by the Central Government in framing a scheme in the garb of determination of inter se seniority. In this connection Mr. Rao has also advanced an argument that in the minimum, before introducing the scheme and altering the service conditions, the employees should have been given atleast an opportunity of hearing. Mr. Rao placed reliance on the decisions of this Court in the case of K. I.

Shephard v. Union of India (1988) 1 SCR 188 : (AIR 1988 SC 686), which was approved and followed in the case of H. T. Trehan v. Union of India 1988 Suppl (3) SCR 923 : (AIR 1989 SC 568). In the Shephard's case (AIR 1988 SC 686 (Supra) when some private banks were amalgamated with Punjab National Bank, Canara Bank and State Bank of India in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949, some of the employees of the amalgamated bank were excluded from employment in the transferee banks and such exclusion was made without giving the employees an opportunity of being heard. When the matter had been challenged before the Kerala High Court, the learned single Judge of the High Court had proposed a post amalgamation hearing but that had been vacated by the Division Bench of the High Court. In that context this Court had held that even a post-decisional hearing will not meet the ends of justice and there is no justification to throw out the employees from their employment without giving them an opportunity of representation and giving an opportunity of representation is a condition precedent to the action taken. We fail to understand how this decision is of any assistance to the appellants. In that particular case on account of certain charges against the employees of the private banks they were not given employment in the transferee bank and, therefore, this Court had observed that before excluding them from consideration they had a right to be heard. In the present case none of the employees of the transferor bank had been excluded from absorption in the transferee bank, on the other hand an option was asked for and thereafter by operation of the Amalgamation Scheme, the employees of the transferor bank have become the employees of the transferee bank and, therefore, question of giving them opportunity of hearing does not arise. In Trehan's case (AIR 1989 SC 568) (supra) the question for consideration was whether there can be deprivation or curtailment of any existing right or benefit enjoyed by Government servant without complying with the rules of natural justice by giving the servant concerned an opportunity of being heard. In that particular case the Caltex Oil Refinery (India) Ltd., a Government company (for short 'Coril'), which was acquired by the Government of India under the provisions of the Caltex (Acquisition of Shares of Caltex Refining (India) Ltd.) Act 17 of 1977, the Board of Directors of Coril had issued a circular indicating the perquisities admissible to the Management staff should be rationalised in the manner stated in the circular. That circular was challenged by the employees of Corils on the ground that it curtails the existing rights and advantages and such circular should not have been therefore, issued without affording an opportunity of hearing. The High Court had quashed that circular accepting the contention of the employees and on appeal this Court confirmed the decision of the High Court and following the earlier view expressed in Shephard's case (AIR 1988 SC 686) (supra) held that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. We fail to understand how this decision also is applicable to the present case where Section 9 of the Acquisition Act authorises Central Government to make a Scheme of Amalgamation of two banks and in exercise of that power the Central Government after consulting the Reserve Bank of India framed the Amalgamation Scheme and retained to itself the power to frame another scheme for placement and seniority of the employees of the transferor bank vis-a-vis the employees of the transferee bank and in accordance with that power framed the Placement Scheme. In our considered opinion, neither the Placement Scheme in any way alters the conditions of service of the employees of the transferor bank nor does it require any opportunity of hearing to be given to the employees of the transferor bank before framing of the Placement Scheme. Mr. Rao also placed reliance on the decision of this Court in the case of Canara Bank v. M. S. Jasra, (1992) 2 SCC 484. In the aforesaid case the question for consideration was, when some private banks are amalgamated with the nationalised bank under the provisions of Banking Regulation Act 1949 can the employees of the private banks claim to be governed by an age of superannuation of the transferor bank or they would be governed by the

terms and conditions of service applicable to the employees of corresponding ranks or status of the transferee bank. This Court answered the question by holding that the employees would be governed by the terms and conditions of service of employees of the corresponding rank of the transferee bank and therefore, their claim to continue in service upto 60 years is unsustainable. Analysing the provisions of the Banking Regulation Act, 1949 and referring to proviso (ii) to clause (i) of sub-section (5) of Section 45 of the said Act this Court held that the employees of the transferor bank would be entitled to the terms and conditions of service which the employees of the corresponding rank and status of the transferee bank were availing of and therefore the High Court was in error in allowing the claim of the employees of the transferor bank. In our considered opinion this decision is of no assistance to the point which arises for consideration in the present case. Firstly, the provisions of Banking Regulation Act 1949 has no application in the case in hand. Secondly, the point in controversy in the case in hand is different than the point in controversy in that case. Thirdly, Section 9 of the Acquisition Act confers power on the Central Bank to frame the Scheme of Amalgamation and in exercise of that power the Amalgamation Scheme had been framed which came into force on 4th September, 1993 and under Clause 5(4) thereof Central Government had retained power to frame the Scheme for placement and inter se seniority between the employees of the transferor bank with the transferee bank and in accordance with that power the impugned scheme of placement had been framed. The question for consideration therefore, is whether the Central Government had the power to frame the impugned Placement Scheme? As has been noticed earlier the expression 'Placement' in Clause 5(4) of the Amalgamation Scheme must be construed to mean redeployment of the employees; fitment of those employees in a grade or rank or cadre in the transferee bank and inter se seniority of those employees vis-a-vis the employees of the transferee bank in the cadre or grade. If this meaning is given to the expression 'Placement' in Section 5(4) of the Amalgamation Scheme and then the impugned provision of Clause 4 (a) (iii) and 4 (b) (ii) are considered it is difficult for us to accept the contention of Mr. Rao that it alters the conditions of service of the employees of the transferor bank and beyond the power of the Central Government. It would be appropriate for us at this stage at the cost of repetition to extract clause 5(4) of the Amalgamation Scheme as well as Clauses 4 (a) (iii) and 4 (b) (ii) of the Placement Scheme.

> "5(4) The Central Government shall, as soon as possible after the commencement of this Scheme, make a Scheme in consultation with Reserve Bank of India for determining the placement of the employees of the transferor bank including the determination of their inter se seniority vis-a-vis the employees of the transferee bank. While making the scheme the Central Government shall take account of relevant factors such as experience of the employee of the transferor bank."

> "4(a) (iii) The procedure for computation of years of service rendered in the transferor bank for the purpose of determining the minimum length of service for promotion from subordinate cadre to clerical cadre as also from the clerical cadre to officer cadre and also for the purpose of posting in the posts carrying special allowance, shall be computed in the ratio 2:1 that is, two years of service in transferor bank as equivalent to one year of service in the transferee bank. For this purpose, total service in the respective cadre of the workmen employees, that is, clerical or sub-staff in which the official is placed at the time of transfer, shall be reckoned but fractions of a month shall be ignored, for example, if a workman employee has rendered two years and nine months service in the clerical / sub-staff cadre, as the case may be, in the transferor bank at the time of amalgamation with transferee bank, it shall be reckoned as equal to one year and four months service in the clerical or sub-staff cadre, as the case may be, in the transferee bank."

"4(b) (ii) For the purpose of seniority on fitment or for promotion to the next grade or scale, the service rendered by an officer in the transferor bank shall be computed, after amalgamation, in the ratio of 2:1, that is, two years of service in the transferor bank is equivalent to one year service in the transferee bank. For this purpose, total service in the scale in which an officer is transferred shall be reckoned but fractions of a month shall be ignored. For example, if an officer has rendered two years nine months service in Scale II in the transferor bank at the time of amalgamation with the transferee bank, it shall be reckoned as equal to one year and four months service in Scale II in the transferee bank."

When the Central Government decided to amalgamate two banks it has to make a scheme after consulting the Reserve Bank of India under Section 9 of the Acquisition Act. In the case in hand Amalgamation became necessary as the transferor bank was incurring heavy loss and without the amalgamation it would have been totally wound up. When a scheme is framed amalgamating two banks, it is not possible for the Central Government to take the details of the service condition in account and that is why it provided that the employees of the transferor bank would become the employees of the transferee bank on the same terms and conditions, with the same rights to pension, gratuity and other matters which would have been admissible to them if they would have continued as the employees of the transferor bank. But so far as the question of their placement and inter-se seniority vis-a-vis the employees of the transferee bank, the Scheme itself stipulated that in consultation with the Reserve Bank of India the Central Government after taking relevant factors into consideration may frame the Scheme. It is in exercise of this power the placement scheme has been framed and under the Placement Scheme what has been intended is that for determination of the inter se seniority and in the matter of promotion from subordinate cadre to the clerical cadre and from the clerical cadre to the officers cadre while the computation of years of service rendered is taken into account, the computation shall be made in the ratio of 2:1 i.e. two years of service in the transferor bank would be considered equivalent to one year of service in the transferee bank. This computation is only one time computation and whether such decision has been taken after taking the relevant factors into account will be considered by us when the question of arbitrariness etc. is considered. But on examining the provisions of the Acquisition Act as well as the provisions of Clause 5(4) of the Amalgamation Scheme framed in exercise of power under Section 9 of the Acquisition Act and the impugned clauses of the Placement Scheme we have no hesitation to come to the conclusion that the Central Government did retain the power to frame the Placement Scheme in question which is essential for determination of the placement of the employees of the transferor bank and the inter-se seniority vis-a-vis the employees of the transferee bank and framing such scheme it was not necessary to afford an opportunity of hearing to the employees of the transferor bank, as in our view there has been no change in conditions of their service. In this view of the matter we answer the first question by holding that the Central Government had the power to frame the subsequent scheme which has been termed by us in this judgment as the Placement Scheme for the placement of the employees of the transferor bank in the transferee bank and for the determination of their inter se seniority with the employees of the transferee bank.

19. Coming down to the second question the legal position is fairly settled that no scheme of

amalgamation can be foolproof and a Court would be entitled to interfere only when it comes to the conclusion that either the scheme is arbitrary or irrational or has been framed on some extraneous consideration. Learned Additional Solicitor General, Mr. Reddy appearing for the respondents in this context contended that the only enquiry which the Court can make is whether the provisions of this scheme is arbitrary and irrational so that it results no inequality of opportunities amongst employees belonging to the same class. In support of this contention he placed strong reliance on the decision of this Court in the case of Reserve Bank of India v. N. C. Paliwal, (1976) 4 SCC 838 : (AIR 1976 SC 2345). In that case the Reserve Bank and 5 different departments which were broadly divided into two groups called the General Department and the Specialised Department and each department was treated as a separate wing for the purpose of determining seniority and promotion of the employees within the group. The employees of the Specialised Departments were having greater opportunities for confirmation and promotion as compared to the employees of the General Department. On account of this disparity the employees of the General Department claimed for equalisation of their chance of their confirmation and promotional opportunity by having a combined seniority list of all employees irrespective of the departments to which they belong. Ultimately the Reserve Bank of India introduced a Scheme called Optee Scheme. In May 1972 the Reserve Bank issued another scheme called Combined Seniority Scheme which provided for integration of clerical staff of the general departments with the clerical staff of the specilised departments and it also made provision for determination of inter se seniority. The validity of the said Scheme had been challenged on the ground that the Scheme is violative of the Constitutional principle of equality and must be held to be discriminatory. This Court negativing the aforesaid contentions held that the integration of different cadres into on cadre cannot be said to involve any violation of equality clause. Examining the question of rule of seniority adopted by the Combined Seniority Scheme the Court further observed :- (At P. 2357, Para 16 of AIR)

> "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 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. The 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.

20. Learned Additional Solicitor General also relied upon another decision of this Court in the case of Tamil Nadu Education Department Ministerial and General Subordinate Services Association v. State of Tamil Nadu (1980) 3 SCC 97 : (AIR 1980 SC 379). In the aforesaid case the District Board Schools were taken over by the Government of Tamil Nadu and after such taking over the issue of merger of the staff confronted the Government. At the time of taking over Government decided to

keep the absorbed personal as a separate service in the education department. This dicotomy between the staff of District Schools and the Government Schools gave rise to heart burning and the Government therefore, considered afresh the question of integration two services, the Government Schools servants were being called the 'A' Wing staff and the staff of the former District Board Schools were being referred to as 'B' Wing staff. Finally after examining the matter of integration in great detail and taking into account the number of personnel in different categories of both the wings and promotional opportunities for them, the Government adopted a formula to integrate the two wings and to equalise their service conditions to the extent possible by issuing the circular which was challenged by the employees of the 'A' Wing on the ground that it is capricious and arbitrary. The Government decision in question fixed the ratio between two wings in the matter of promotion and fixed the principle of computation of service in determining the seniority. This Court on examining the ratio fixed by the Government order held "The ratio of 5:3 and 3:2 respectively were prescribed for the ministerial staff and teaching staff, taking realistic note of the total numbers in the two equivalent groups viz. quondam District Board servants and relative Government School staff. This is not an irrational criterion when coalescence of two streams springing from two sources occurs."

The Court further observed :- (At p. 381, para 8 of AIR 1980 SC)

> "Counsel for the respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar in the field. Bearing in mind the strength of the District Board staff to be included, the ratio is rational. May be, a better formula could be evolved, but the Court cannot substitute its wisdom for government's, save to see that unreasonable perversity, mala fide manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury.

21. The Court also examined the principle of fixation of seniority and held (At p. 381, para 9 of AIR 1980 SC 379) :-

> "The more serious charge is that length of service for fixing seniority has inflicted manifest injustice on the 'A' Wing i.e. regular Government staff, being born in arbitrariness and fed on mala fides. It is fair to state the generalities and then proceed to particularities. Here we must realise that all the schools having been taken over by the State directly the personnel had to be woven into the basic fabric. Some relevant formula had to be furnished for this purpose so that the homogenisation did not unfairly injure one group or the other. In 1970 Government chose not to integrate but to keep apart. Later, this policy was given up. We cannot, as Court, quarrel if administrative policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. Nor can we predicate mala fides or ulterior motive merely because Assembly interpellations have ignited rethinking or, as hinted by counsel, that the Education Minister's sensitivity is due to his having been once District Board teacher. Democratic processes - both these are part of such process - are not anathema to judges and we cannot knock down the order because Government have responded to the Question Hour or re-examined the decision at the instance of a sensitive minister."

> At this stage it would also be appropriate to notice yet another decision of this Court in the case V. I. Khanzodoe v. Reserve Bank of India (1982) 2 SCC 7: (AIR 1982 SC 917). In which case the Court was examining again the principle evolved by the Reserve Bank of India for a combined seniority for different groups of employees with retrospective effect. The Court observed (At pp. 931-32 of AIR):-
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> "Combined seniority has been recommended by two special committies, whose reports reflect the expertise and objectively which was brought to bear on their sensitive task. It is clear that inter group mobility and common seniority are a safe and sound solution to the conflicting demands of officers belonging to Group I on one hand and those of Group II and III on the other. Private interest of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some Section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these."

22. In S. L. Sachdev v,.Union of India, (1981) 1 SCR 971 : (AIR 1981 Sc 411) a particular provision of the Recruitment Rules of 1969 was being challenged as arbitrary. The said provision provided that UDGs drawn from Audit Offices must put in 10 years of service for acquiring eligible for promotion where other UDGs are eligible for promotion in putting 5 years of service. Rejecting the contention of the Appellant this Court held (Para 15 of AIR):-

> "Considering the history leading to the formation of the new organisation, SBCO-ICO, the distinction made between the two classes of UDGs, in the context of the length of their service for the purposes of promotion is not arbitrary or unreasonable. The staff of the Audit Offices which was engaged in the Saving Bank's work might well have faced retrenchment. Instead of subjecting them to that hardship, they were given the option of joining the new organisation. Experience-wise also, there would appear to be fair justification for requiring them to put in longer service in the new organisation before they are eligible for promotion to the higher grade. The challenge has therefore to be repelled."

23. The facts of this case are somewhat akin to the facts of the present case, Mr. Rao, learned counsel appearing for the appellants on the other hand, urged that the subsequent scheme framed for placement of the employees must be held to be arbitrary as there is no rationale for wiping of the past service of the employees of the transferor bank. Relying upon the decision of this Court in the case of K.Madhavan v. Union of India (1988) 1 SCR 421 : (AIR 1987 SC 2291) the learned counsel urged that the entire period of service rendered by the employees of the transferor bank can be taken into account for the purpose of their seniority after amalgamation. In the aforesaid case petitioner Madhavan was a permanent officer in the grade of Deputy Commandant. On 14-6-76 it has been found to be equivalent to the grade of S. P. in the CBI. When Madhavan's services were taken over by the CBI the question arose whether his past service shall be taken into account for determining his seniority in the CBI and in that context this Court has observed that this entire period of service should be taken into account. In our considered opinion this decision is of no assistance to the appellant in the present case where particular scheme was required to be framed after amalagamation of the services of the transferor bank with the transferee bank and in that scheme

certain provisions have been made as to how the employees of the transferor bank would be fitted in the transferee bank.

24. Mr. Rao, learned counsel also placed reliance on another decision of this Court in the case of Tej Narain Tiwary v. State of Bihar 1993 Suppl (2) SCC 623 in support of his contention that in a case of amalgamation the entire past service of the employees should be taken into account. In that case the appellant Narain Tiwary had been appointed by the Bihar School Examination Board as Special Officer in August 1969. The said post was abolished with effect from April 1. 1971. He filed a suit and obtained injunction against the abolition of post and termination of his services. In the course of litigation a compromise had been arrived at between the Board and the appellant wherein he was appointed as Sectional Head Officer and his pay as Special Officer was also protected. The Board, therefore, passed an order on March 20, 1972 appointing the appellant as a Sectional Head Officer in the general cadre. In the seniority list of Sectional Officers prepared by the Board the appellant had been shown above respondent No. 5 and he had been granted promotion to the post of Asstt. Secretary. The respondent No. 5 therefore, filed a Writ Petition challenging the seniority list. The High Court came to the conclusion that the post of Sectional Officer occupied by the appellant not being a cadre post the services rendered by the appellants as Special officer cannot be taken into account for his seniority in the cadre of Sectional Officer. This Court in appeal reversed the judgment of the High Court in and held that the compromise entered into between the parties and the order of March 20, 1972 is capable of being interpreted as an order of amalgamation of the ex cadre post of Special Officer with the cadre of Sectional Officer and consequently the appellant would get his seniority from the date of his appointment as a Special Officer. In coming to this conclusion the Court also relied upon the results and orders of the Board itself. We fail to understand how this case can be of any assistance to the appellants in the present case.

25. In view of the legal position as discussed above, and on examining the provisions of the Placement Scheme more particularly Clauses 4(a) (iii) &(b) (ii) and on consideration of the opinion rendered by the Reserve Bank of India we have no hesitation to come to the conclusion that the said Scheme is neither arbitrary nor irrational and on the other hand a just scheme evolved by the Union Government after due consultation with the Reserve Bank of India and Court cannot interfere with such a Scheme.

26. Coming to the third question the answer would obviously depend upon the relevant materials considered both by the Reserve Bank of India as well as by the Union Government before framing of the Placement Scheme. At the outset it may be noted that the most important function of the Reserve Bank of India is to regulate the Banking System generally. It is usually described as a Bankers Bank. The Reserve Bank of India has been given certain advisory and regulatory functions. It advices government and other banks on financial and banking matters. The provisions of the Reserve Bank of India Act shows that a bank has been created as Central Bank with powers of supervision, advice and inspection over banks particularly those desiring that they be included in the Second Schedule or those Scheduled already. The Reserve Bank safeguards the economy and financial stability of the country. We have set out the functions of the Reserve Bank of India because the placement scheme which is being impunged in the present case by the employees of the transferor bank had been framed in due consultation with the Reserve Bank of India and the said Reserve Bank has filed affidavits indicating the broad consideration on which the the ratio 2:1 has been fixed. The Union of India in its affidavit filed in this Court, sworn to by the Under Secretary in the Ministry of Finance, Banking Division stated thus :-

"Central Government after taking into consideration the complete data and entire

material on record of the case and in consultation with Reserve Bank of India decided that the Service rendered in erstwhile New Bank of India by employees / officers in grade / scale in which they were placed at the time of amalgamation had to be computed in the ratio of 2:1 and that too only for the purpose of computing eligibility for consideration for promotion to next grade / scale and / or for the purpose of postings on a post carrying special allowance. For all other purpose, the service rendered by the employees of erstwhile New Bank of India has to be treated at par with the service rendered by the employees of New Bank of India in PNB. It is relevant to mention that New Bank of India was small in size both in regard to its branches and also in terms of its deposits and business etc. A comparison of the erstwhile New Bank of India and the Punjab National Bank in terms of productivity, volume of business, staff strength, time taken for promotion etc. as indicated below would reveal that the employees of Punjab National Bank were having higher productivity per employee and higher level of responsibilities, house keeping and higher average business per branch. As compared to this, the promotional avenues available to them were less. On account of the merger, if the number of years of services were equated between the employees of erstwhile New Bank of India and Punjab National Bank, it would happen that the employees with longer years of service of Punjab National Bank would become junior to the employees with lesser period of service in the correspondent grades."

27. The Reserve Bank of India in its affidavit in this Court have stated thus:-

"New Bank of India limited was nationalised and constituted as New Bank of India in 1980 under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. It was a bank comparatively small in size with 591 branches and deposits of Rs. 2362.33 crores as at the end of March, 1993.

6. The Reserve Bank of India as the Central Bank of the country, has been monitoring on a continual basis the performance of the various public sector bank. It was brought to the notice of the Government by Reserve Bank of India that the financial position of New Bank of India as revealed by the Annual Financial Review conducted by Reserve bank of India as on 31st March, 1992 was extremely unsatisfactory. The losses of the Bank including loan losses were estimated at Rs. 306.90 crore which exceeded the provisions, reserves and paid up capital of the bank amounting to Rs. 242.78 crore. The deposits of New Bank of India had thus been eroded to the extent of Rs. 64.12 crore. The said evaluation of Reserve Bank of India did not take into account the depreciation in Government and other securities estimated at Rs. 25.52 crore which had not been provided for. The bank had declared a loss of Rs. 41.52 crore in its published accounts for the year 1991-92.

7. The Reserve Bank of India brought to the notice of the Government various deficiencies in the working of the bank. Some of these are set out below:-

i) The calibre and quality of officials in the senior management cadres was inadequate.

ii) The supervision and control exercised by the Head Office over the controlling offices and the branches was unsatisfactory. The internal working of the branches

was also far from satisfactory.

iii) Funds management had been a weak area. The bank had been lending much beyond what its scarce resources would permit, relying heavily on market borrowings. With the constraints on resources the bank would find it difficult to service even its existing borrowers.

iv) The bank had not been able to bring about any improvement in credit management despite repeated advice. The appraisal of credit proposals showed several deficiencies. Discretionary powers had not been exercised properly by the functionaries at various levels including the top executives. Ad hoc / spot section / excess drawls and had been allowed frequently. The post disbursement supervision of advances was also unsatisfactory.

v) The bank was saddled with substantial load of sticky advances amounting to Rs. 438.66 crore as on 31-3-1992 which formed 39.2% of the total advances.

vi) The bank did not comply with the minimum capital requirement under the provisions of the Reserve Bank of India Act. It was prima facie a fit case for de-scheduling the bank;

vii) The bank was not in a position to pay the depositors in full as and when their claims accrue and its methods of operation were far from satisfactory. Under the policy followed with reference to private sector banks, this would be a fit case for compulsory merger, as it did not satisfy even the requirements under Section 22 of the Banking Regulation Act, 1949 for carrying on banking business although the said provisions do not apply to nationalised banks.

8. The Reserve Bank of India was of the view that the possibility of New Bank of India earning reasonable profits in the near future and making up the gap in provisions an emerging as strong and viable unit was remote. It was doubtful whether the bank would be in a position, to recover or regularise and bring down the high level of substandard advances to any significant extent. If the bank was to remain as a separate unit, financial assistance of substantial magnitude would have to be given to it. But the extremely weak senior management structure of the bank as well as the deficiencies in its lower sections did not infuse confidence that even with such assistance, the management would be able to remove the weaknesses in its working and make it a viable unit in the near future."

28. The appellants, however, strongly relied upon the fact that both the banks being nationalised banks and the recruitment to both the banks being through the same Selection Board, there is no justification for treating the services of the employees of the transferor bank of 2:1 basis after amalgamation for the purpose of promotion. In our considered opinion the contention of the appellant is wholly unsustainable. As has been stated earlier, the financial loss sustained by the transferor bank had brought the bank to a virtual collapse. It is at that point of time the Reserve Bank of consideration having taken a sympathetic view of the matter and instead of advising winding up of the bank and its liquidation advised for its merger with a stronger bank and the Government of India ultimately accepted the advise of the Reserve Bank. On its amalgamation necessary provisions were required to be made for the placement of the employees of the transferor

bank with the employees of the transferee bank. At that stage the bank as well as the Union Government considered the total volume of business of both the banks, the rate of promotion in both the banks, the total number of employees in both the banks, as well as the impact if the entire length of service of the employees of the transferor bank is taken into account or one time reduced level is taken into account and finally evolved the scheme of placement and modalities for promotion. Having considered the necessary averments made in the affidavits filed by the Union Government as well as by the Reserve Bank of India we are of the considered opinion that in framing the Placement Scheme and determining the ratio of 2:1 in clause 4 (a)(iii) and 4 (b)(ii) the appropriate authorities have taken relevant and germane materials into consideration and the said provision cannot be termed as arbitrary and irrational.

29. So far as the fourth question is concerned we do not find any substance of Mr. Rao's argument that the Placement Scheme is retrospective in nature. As we have discussed earlier, on deciding to amalgamate the two banks in exercise of power under Section 9 of the Acquisition Act the Union Government framed the Scheme of amalgamation and notified the same on 4th september, 1993. But in that scheme excepting making the employees of the transferor bank as employees of the transferee bank, the other question like their inter se seniority and fitments in the cadre equal of the transferee bank had not been decided. On the other hand clause 5(4) of the Amalgamation Scheme left the matter open for being evolved at a later stage and the complete fusion between the employees of the two banks came only on the subsequent scheme being framed, which scheme was evolved after due deliberations on the relevant materials. The scheme therefore, necessarily have to be given effect with effect from the date of amalgamation and the same cannot be held to be retrospective in nature, as contended by Mr. Rao.

30. The only other question which remains for consideration is whether the conclusion of the High Court that the scheme making process under Section 9 of the Acquisition Act is not legislative is correct in law. In view of our conclusion on the four question formulated, this question is not of much relevance but since the High Court has recorded a conclusion and the learned Additional Solicitor General and Shri Salve advanced the arguments we think it appropriate to answer this question also. The High Court relied upon the decision in Sheophard's case (AIR 1988 SC 686)(supra) and came to hold that the provisions of Section 45 of the Banking Regulation Act being in pari materia with Section 9 of the Banking Companies Acquisition and transfer of Undertaking Act. 1980, and the scheme framed under Section 45 of the Banking Regulation Act having been held by this Court to be not legislative, the scheme framed under the Acquisition Act as in the present case, must also be held to be not legislative one. It is undisputed that in Shephard's case (supra) the amalgamation was of a private bank with a nationalised bank and the provisions of the Bank Regulation Act, 1949 applied. This Court in Shephard's case (supra) on examining Section 45 (11) of the Banking Regulation Act, 1949 came to hold that merely because a scheme framed is required to be laid before both the Houses of Parliament after the same has been sanctioned by the Central Government the Scheme cannot be held to be legislative in nature. But in our considered opinion the High Court has failed to notice the fundamental distinction between the provisions of Section 45 of the Banking Regulation Act and Section 9 of the Acquisition Act under Section 9 of the Acquisition Act under which Act the impunged scheme has been framed, every scheme framed by the Central Government has to be laid before each Houses of Parliament for a total period of 30 days and the Parliament has the power to agree to the Scheme and making any modification or in giving to a decision that the scheme should not be made and it is only thereafter the scheme has the effect either in the modified form or does not agree. The essential distinction between the two provisions therefore, is that whereas under the Banking Regulation Act the Scheme framed has merely to be placed before the Parliament and nothing further but under the Acquisition Act the

scheme becomes effective only after the same is placed before both the Houses of Parliament and after the Parliament makes such modification and agrees to the scheme. In this view of the matter the decision of this Court in Shephard's case (AIR 1988 SC 686) (supra) has no application to a scheme framed under the provisions of the Acquisition Act and in our considered opinion, a scheme framed under Section 9 of the Banking Companies Acquisition and Transfer of Undertakings Act, 1980, is a legislative one. The High Court was in error in holding the scheme not to be a legislative one.

31. Mr. Sharma, the learned senior counsel appearing for the appellant, the Punjab National Bank Employees Federation urged that the ratio of 2:1 fixed under the Placement Scheme in fact works out gross injustice. The interest of the employees of the Punjab National Bank should not be jeopardised by bringing the employees of the New Bank of India and not credit should be given to the employees of the New Bank of India for their past services rendered. We do not find any force in the aforesaid contention and, as discussed earlier, the ratio of 2:1 was fixed in the placement scheme in consultation with the Reserve Bank of India and after a comparative study of the business of the two banks, the rate of promotion, the higher productivity and larger measure of responsibility and higher average business per branch of the Punjab National Bank as compared to the New Bank of India and all other germane consideration. The submission of Mr. Sharma, therefore, is rejected.

32. In the premise, as aforesaid, all the appeals are dismissed but in the circumstances there will be no order as to costs. Appeal dismissed.