



*Natural justice—"Fairness in action"—Action of State or State instrumentalities—Test of fairness—Held : An established test to judge validity of such action.* A

*Words and Phrases :*

*"Redeployment" and "Transfer"—Meaning of—In the context of New Bank of India (Determination of Placement of Employees—Officers and Workmen—Of the New Bank of India in Punjab National Bank) Scheme, 1993, Para 3.* B

*"Placement"—Meaning of—The word "placement" has a wider meaning but the word as used in the Amalgamation Scheme of New Bank of India with Punjab National Bank (PNB) referred only to fitment of officers/staff in the administrative set-up of PNB—Interpretation of Statutes.* C

The Central Government framed a scheme for amalgamation of New Bank of India (NBI) with Punjab National Bank (PNB) and in exercise of its powers under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, made a scheme named as New Bank of India (Amalgamation and Transfer of Undertakings) Scheme, 1993. Paragraph 5(4) of the Amalgamation Scheme provided that the Central Government would make another scheme for placement of officers and staff of NBI. On the commencement of the scheme the Undertakings of NBI stood transferred to and vested in PNB. After the amalgamation, PNB did not close any of the branches of NBI but it did not consider it necessary to have separate head office and regional offices for NBI at the places where PNB was already having its regional offices. Some of the officers and employees of NBI were, therefore, found surplus and it became necessary to deploy/redeploy them in other branches which involved outstation transfers. These transfers were made in accordance with the guidelines framed by PNB on 16-9-1993. Subsequently on 8-12-1993 the Central Government made the New Bank of India (Determination of Placement of Employees - Officers and Workmen - of the New Bank of India in Punjab National Bank) Scheme, 1993. D E F G

The respondents as well as some employees of NBI challenged the aforesaid transfers before the High Court. The grounds of challenge were: (i) the transfers were violative of paragraphs 5(2) and 5(4) of the Amalgamation Scheme, (ii) PNB could not make transfers before framing of H

- A Placement Scheme by the Central Government, (iii) the transfers were arbitrary and discriminatory although not a single branch or office was closed by PNB, (iv) the transfers were violative of the agreements entered into by NBI with its officers/employees, (v) after transferring some employees of NBI as being surplus, PNB brought its own employees at those stations and, therefore, in the garb of redeployment of surplus staff, B PNB accommodated its own employees and (vi) the transfers were not consistent with the guidelines dated 16-9-1993. The High Court allowed the petition. Being aggrieved the appellants preferred the present appeal.

Allowing the appeal, this Court

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HELD : 1.1. It is clear from paragraph 5(2) of the New Bank of India (Amalgamation and Transfer of Undertakings) Scheme, 1993 that the officers and employees of New Bank of India (NBI) became employees of Punjab National Bank (PNB) from the date of commencement of the Amalgamation Scheme and they came under the supervision and control of PNB.

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It was, therefore, permissible for PNB to deploy or transfer surplus employees of NBI till the New Bank of India (Determination of Placement of Employees - Officers and Workmen - of the New Bank of India in Punjab National Bank) Scheme, 1993 was made by the Central Government. It could not have been the intention of the Central Government, when it made

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the Amalgamation Scheme, that no deployment or transfer of the employees of the erstwhile NBI should be made. [1137-E-H, 1138-B-C]

1.2. Making of a separate Placement Scheme by the Central Government is not a statutory requirement. The Central Government reserved to itself the power for making the Placement Scheme in order to see that no injustice was done to the employees of NBI as a result of their absorption in the service of PNB. Though the word 'placement' has a wider dictionary meaning it does not appear to have been used in Paragraph 5(4) of the Amalgamation Scheme to mean an act of placing or posting. It is unthinkable that the Central Government by reserving to itself the power of

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H 5(4) of the Amalgamation Scheme for making a Placement Scheme the

Central Government appears to have intended to lay down the norms and guidelines for solving the problems that were likely to arise as a result of the merger. In this context, the word 'placement' appears to have been used in the sense of fitment into a position in the administrative set-up of PNB. The Placement Scheme was contemplated for deciding at which level or in which position the employees of NBI were to be fitted in the administrative set-up of PNB. It was possibly for this reason that it was further provided in Paragraph 5(4) that while making the scheme the Central Government shall take into account relevant factors such as experience of the employee, etc. [1138-D-H, 1139-A-B]

*New Bank of India Employees' Union v. Union of India*, [1996] 8 SCC 407, relied on.

2. If it was the intention of the Central Government that PNB should not deploy or transfer any employee of NBI till the Placement Scheme was made, it would have made an elaborate provision in that behalf in the Placement Scheme. Instead only a general provision has been made in Paragraph 3 of the Scheme. The provision for transfer of workmen-employees was made in the Placement Scheme so as to remove any doubt with respect to the power of PNB to redeploy or transfer them to any of the offices or branches of PNB. There is nothing in Paragraph 3 of the Placement Scheme, which would indicate that redeployment/transfers of the officers/workmen-employees of NBI were not contemplated by the Central Government till the Placement Scheme was framed by it. The important provision made in the Placement Scheme is with respect to fixation of *inter se* seniority and determination of seniority for the purpose of promotions. [139-F-G, 1140-C]

3. The Amalgamation Scheme did not deny the power of an employer to PNB to effectively and economically utilise its manpower and to make transfers when found necessary. The banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch and that the management is in the best position to judge how to distribute its employees between the different branches. Therefore, the action of framing guidelines and then effecting transfers in accordance therewith cannot be said to be inconsistent with or contrary to the statutory Amalgamation and Place-

A ment Schemes. [1140-G-H, 1141-A]

*Syndicate Bank Ltd. v. Workmen*, (1996) 1 LLJ 440, relied on.

*K. Prabhavathi v. The Dy. Divisional Manager, Syndicate Bank II*, (1995) BC 538 AP, held inapplicable.

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4. Though "fairness in action" is now an established test to judge validity of actions of State or State instrumentalities, yet even after applying this test the action of PNB cannot be described as arbitrary or discriminatory because PNB considered it necessary to close the head office and regional offices of NBI at the places where PNB was already having its regional offices and, therefore, surplus staff had to be deployed. The fact that not even a single branch of NBI was closed by PNB does not lead to the inference that transfers and redeployment was unnecessary. Where service of an employee is transferable even though within a limited area, in special circumstances, he can be transferred outside that area. The respondents have failed to establish their case of discrimination. PNB has acted in a fair manner as is clear from the guidelines framed by it. [1141-D, 1142-B-E]

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*Gurmail Singh v. State of Punjab*, [1991] 1 SCC 189 and *Union of India v. D. Mohan*, [1995] 3 SCC 115, relied on.

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5. The respondents quoted certain instances to show that after transferring some employees of NBI as being surplus, PNB brought its own employees at those stations. It was submitted that this fact was not refuted by PNB. No details have been given by the respondents as to exactly when and under what circumstances those transfers of the employees of PNB were made. It is quite likely that they were routine rotational transfers. It is also possible that they were required to be made for some compelling reasons or administrative exigencies. It is, therefore, not possible to accept the contention that in the garb of redeployment of surplus staff, PNB accommodated its own employees. [1143-A-B]

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6. The respondents' contention that their transfers are against the agreements entered into with NBI is also misplaced because this is not a case of rotational transfers but it is a case of redeployment of surplus staff.

[1143-H, 1144-A]

7. A grievance was also made on behalf of the respondents that some H of the order of transfers are not consistent with the guidelines dated

16-9-1993. If that is so it would be open to the respondents to draw the attention of the concerned authorities of PNB to such orders and seek their cancellation or modification. PNB will have to consider such application or representations, if made, and take appropriate decision or pass orders in accordance with the said guidelines. [1144-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 749 of 1997.

From the Judgment and Order dated 24.1.96 of the Allahabad High Court in S.A. No. 877 of 1993.

V.R. Reddy, Additional Solicitor General, O.C. Mathur and Ms. Meera Mathur for JBD & Co. for the Appellant.

Narayan B. Shetye, Mukul Mudgal and Arun K. Sinha for the Interveners.

Dr. Rajeev Dhawan, D.S. Chauhan, R. Vasudevan, K.D. Saini, Chetan Sharma, Rakesh Dwivedi and Prashant Kumar for the Respondent No. 7 and Interveners.

The Judgment of the Court was delivered by :

NANAVATI, J. Leave granted.

This appeal by special leave is directed against the judgment and order passed by the High Court of Allahabad in Special Appeal No. 877 of 1993.

Fourteen banks including the Punjab National Bank Ltd. (for short 'PNB') were nationalised in 1970. Six more banks including the New Bank of India (for short 'NBI') were nationalised by the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980 (for short the 'Act'). Finding it necessary, the Central Government, in exercise of the powers conferred by Section 9 of the Act, framed a scheme for amalgamation of NBI with PNB, named as the New Bank of India (Amalgamation and Transfer of Undertakings) Scheme, 1993. On the commencement of the Scheme the Undertakings of NBI stood transferred to and vested in PNB. All the officers and other employees of NBI, who were willing to join PNB, became officers and employees of PNB. As a result of this merger, some

- A officers and employees of former NBI were found surplus. Therefore, on 16.9.93, the PNB framed guidelines for deployment/re-deployment of such surplus staff as well as for ensuring exchange of personnel and proper placing of officers of the banks. Following those guidelines the surplus workmen-staff of NBI was transferred to various branches of PNB. These transfer orders were challenged by the All India New Bank of India Employees Federation and NBI Employees Union as well as some of the employees of NBI (for short referred to as petitioners) by filing a writ petition in the Allahabad High Court. It was allowed by a learned Single Judge of the High Court on 11.11.93. PNB and their officers filed an appeal before a Division Bench of that Court. While the appeal was pending an application for impleadment was made by 27 employees of NBI. That was allowed. The Division Bench dismissed the appeal with certain observations.

- D The transfer orders and the transfer policy were challenged before the learned Single Judge on two grounds. It was contended that they were illegal as hit by paragraph 5(2) of the Amalgamation Scheme and also because no scheme as envisaged by paragraph 5(4) thereof for "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" was framed by the Central Government till then and without which no deployment or transfers could have been made. It was also contended that the transfer orders and the transfer policy were bad as they meted out discriminatory treatment to the employees of NBI by illegally terming them as surplus staff although not a single branch or office of the NBI was closed by PNB. The appellant supported its orders and the transfer policy on the ground that neither the transfer policy nor the transfer orders were inconsistent with paragraph 5(4) of the Scheme which really provided for making a separate scheme for fitment of the employees of NBI and consequent determination of their *inter se* seniority. It was its contention that deployment by way of transfers was required to be made as of necessity to adjust the surplus staff of NBI, as it was found after scrutiny that a large number of them were in excess and the Management was faced with the problem of either retrenching their services or adjusting them at some other places. The learned Single Judge rejected the contention that the transfer policy was hit by paragraph 5(4) of the Scheme and that in absence of a scheme for placement of the employees of NBI no transfers could have been made.
- H But he found substance in the second contention for the reason that no

office establishment or branch run by NBI had been closed nor it was explained as to how some of the employees of NBI had become surplus and also because the averment made in paragraph 30 of the writ petition "that the employees/officers of the erstwhile NBI are being transferred outside the stations/states and in their places the employees/officers of the PNB are being adjusted which further proves the *mala fides* of the Punjab National Bank" was not denied. He, therefore, held that the transfer orders and the transfer policy were violative of Articles 14 and 16 of the Constitution and consequently allowed the petition, quashed the circular dated 16.9.93 and also the orders of transfers issued thereunder.

The bank preferred an appeal before a Division Bench of that Court. The Division Bench took the view that although the employees of NBI, on the commencement of the Scheme, became employees of PNB, they did not become part and parcel of the existing service of PNB. It held that their merger in the existing service of PNB was to become effective only after the Central Government framed a placement scheme under paragraph 5(4) of the Amalgamation Scheme. It also held that the word "placement" has been used in the scheme by the Central Government in the sense of deployment of the employees of NBI in the service of PNB so as to bring about complete merger of the employees of the two banks and that such deployment was to be made on the basis of the principles and criteria laid down in placement scheme. It further held that in absence of a placement scheme it was not open to the appellant to make such deployment of the employees of NBI. It was also of the view that placement/deployment of the employees of NBI had to be a one-time event and was a part of the amalgamation process provided by the Scheme. Therefore, provision for placement was made in the Scheme itself; and, also because it was considered necessary to prevent giving of step-motherly treatment to the employees of NBI. It held that as the transfer orders were made by the PNB on 16.9.93 without waiting for the placement scheme which was later on made on 8.12.93, the orders of transfers were bad, particularly because the criteria and the principles for deployment laid down in the Scheme are different and inconsistent with the criteria fixed by PNB in its transfer policy. The Division Bench, therefore, dismissed the appeal with an observation that after implementing the placement scheme it will be open to PNB to pass rotational transfer orders regarding the employees of NBI in accordance with law. Aggrieved by that decision PNB has, with the leave of this Court, filed the present appeal.

A In order to provide for the acquisition and transfer of the undertakings of certain banking companies, the Parliament enacted the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. It came into force on 15.4.80. Under the Act, the New Bank of India Limited which was till then a private bank became a corresponding new bank renamed as  
B New Bank of India and its entire capital vested in the Central Government. The NBI was incurring losses and by 1991-92, its financial position had become so bad that its capital and deposits completely stood eroded. The Central Government, therefore, in consultation with the Reserve Bank of India, decided to amalgamate NBI with PNB and in exercise of its powers under Section 9 of the Act made the Amalgamation scheme. On  
C commencement of the said scheme the undertakings of NBI stood transferred to and vested in PNB. The employees of the NBI, who were willing to continue in service, became employees of PNB. In this behalf sub-paragraph (2) of paragraph 5 provided as under :

D "Save as otherwise provided in this Scheme, every officer or other employee of the transferor bank shall become on the commencement of this Scheme an officer or other employee, as the case may be, of the transferee bank and shall hold his office or service in that bank on the same terms and conditions and with  
E the same rights to 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 subject, however, to such facilities being available at the time of the transfer to similarly placed officers and employees of the transferee bank and continue to do so unless and until his employ-  
F ment in the transferee bank is terminated or until his remuneration, terms and conditions are duly altered by the transferee bank."

Sub-paragraph (4) thereof, which reads as under, provided for making a placement scheme :-

G "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  
H bank. While making the Scheme the Central Government shall take

account of relevant factors such as experience of the employee of the transferor bank." A

But before a placement scheme could be made by the Central Government, PNB in order to facilitate re-deployment of surplus staff of NBI as well as for ensuring proper placement of the officers of the two banks, framed guidelines on 16th September, 1993. On the same day it also framed guidelines for deployment of workmen staff of NBI as deployment of such staff had become necessary in view of the special circumstances and with a view to achieve the object of utilising the available manpower in the best possible manner to achieve optimum productivity. The said guidelines for deployment of the workmen staff were as under : B C

"1. After the surplus staff has been identified, its redeployment may be considered within the same language area in the zone.

2. In the event the staff is identified as surplus for the zone, the matter may be taken up with HO : Personnel Division for the redeployment of such staff in the same language area of nearby zones. D

3. For out of station transfers but within the Region/Zone, the criteria should be the length of service of an employee, i.e., the employees with lesser length of service should be transferred first. This will, however, not apply in case of lady employees and physically handicapped employees employed on this ground, and employees retiring within next three years, subject to merits of each case. E

4. In case of transfers within the same station, the total stay of an employee in a branch shall be the criteria of transfer and those employees having longest stay in the branch will be transferred first. F

5. In case of employees who are drawing special allowances, the posting for which is made on town-wise seniority in our bank, they may be retained within the same town/city with the concurrence of Zonal Manager. G

6. Transfer requests of employees from the surplus Regions to the deficit Regions within the Zone may be acceded to by the H

A Zonal Managers.

7. Keeping in view the administrative exigency and merits of each case, the ZMs may exercise their discretion to effect transfers beyond these guidelines only in exceptional cases which shall be reported to HO : Personnel Division with full details in each case.

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8. The ZMs shall ensure inter-change of employees in the branches located at the same station so that at least 20-30 per cent of the workmen staff in the branches of erst. NBI are from PNB Offices, in order to hasten the process of assimilation of systems and procedures.

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9. While effecting transfers under these guidelines, our instructions regarding Rotational Transfers of the staff may be kept in view and the staff of PNB as well as erst. NBI who fall due for transfers under the Rotational Transfer guidelines, may also be transferred simultaneously."

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Subsequently on 8th December, 1993 the Central Government, in exercise of the powers conferred by Section 9 read with sub- paragraph (4) of Paragraph 5 of the Amalgamation Scheme made 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. It has been made effective retrospectively from 4.9.1993. Paragraph 3 of that Scheme provides for redeployment of officers/staff and reads as under :

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"Redeployment of Officers/Staff -

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The transferee bank may redeploy/transfer the Officers/Award Staff of the transferor bank to any of the offices/branches of the transferee bank keeping in view the suitability of the officer/employee, administrative exigencies and manpower requirements of the transferee bank, in accordance with the provisions contained in the Punjab National Bank (Officers') Service Regulations, 1970 or existing Awards/Bipartite Settlements. The officers may be transferred to any place in India and the postings/transfers of workmen employees will be made within the same linguistic area."

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H In Paragraph (4) thereof the Central Government has laid down the

norms for determining seniority of employees (officers or workmen) of the NBI vis-a-vis employees of PNB. Sub-paragraph (a) pertains to workmen/employees and by sub-paras (a)(i) and (a)(ii) the Rules, Settlements etc. applicable to the workmen/employees of PNB are made applicable to the workmen/employees of NBI. In sub-paragraph (a)(iii) the procedure for computation of years of service rendered in NBI for the purpose of determining minimum length of service for promotion has been stated. In terms of that procedure two years of service in NBI is to be treated as equivalent to one year of service in PNB. With respect to officers also the same ratio of 2:1 has been fixed for the purposes of seniority, fitment and promotion to the next higher grade and scale. For officers the Placement Scheme also provides that they shall be placed in the same grade and scale of the pay with suitable changes in their designations, if required.

As stated earlier, construing the Amalgamation Scheme the High Court has held that it did not bring about complete merger of the Staff of NBI in the existing service of PNB and such merger being a one time event and part of amalgamation process was intended to be complete only after the Central Government framed a Placement Scheme.

In our opinion, the High Court has neither construed the Amalgamation Scheme nor interpreted the word 'placement' used therein correctly. On commencement of the Amalgamation Scheme the undertakings of NBI stood completely transferred to and vested in PNB. Moreover, paragraph 5(2) thereof in clear terms provided that every officer and other employees of NBI shall become from that date an officer or employee of PNB. Not only that it further provided that they shall hold office or be in service on the same terms and conditions. Since they became officers and employees of PNB it was further provided that they will continue in the service on the same terms and conditions until they are duly altered by PNB. Thus from the date of commencement of the Scheme the officers and other employees of NBI not only became officers and employees of PNB but also became subject to supervision and control of PNB. It was, therefore, not correct to say that did not become part and parcel of the then existing service of PNB right from that date. If the officers and employees of NBI were to be treated as a separate lot and not to be disturbed till the placement scheme was made by the Central Government then it would not have made a provision with respect to the terms and conditions on which they were to

- A become the employees of PNB. In Paragraph 5(2) the Central Government also made it clear that it was thereafter open to PNB to terminate services of such employees and also to alter their remuneration and other terms and conditions of service. If the merger was intended to be complete only after making of the placement scheme then the Central Government would not have made such a provision in the amalgamation scheme itself. If the
- B PNB could thus exercise such wide powers of an employer before making of a placement scheme it is difficult to appreciate why it did not have the power to deploy or transfer the employees of NBI till the placement scheme was made. Therefore, it could not have been the intention of the Central Government, when it made the amalgamation scheme, that no
- C deployment or transfer of the employees of the erstwhile NBI should be made.

- D Making of a separate placement scheme by the Central Government is not a statutory requirement. It appears that in order to see that no injustice was done to the employees of NBI, as a result of their absorption in the service of PNB, it reserved to itself the power to make another scheme with respect to them for determining their placement in the administrative set-up of PNB and to lay down the norms and guidelines for determination of their *inter se* seniority vis-a-vis the employees of PNB. Though the word 'placement' has a wider dictionary meaning it does not appear to have been used in Paragraph 5(4) of the amalgamation scheme to mean an act of placing or posting. After amalgamation of NBI with PNB it was not expected that PNB should maintain all the offices and branches of NBI and should carry on its business through those offices and branches with the same employees of NBI. NBI was not run efficiently and it was
- E for that reason that it has made huge losses. These circumstances, also indicate that the Central Government did not intend that till a placement scheme was framed by it PNB should not deploy or transfer any employee of NBI to any other branch or office. Moreover, it is unthinkable that the Central Government by reserving to itself the power of making a placement scheme intended to determine the places where the employees of NBI were
- F to be deployed or posted. Considering the complex nature of banking operations it is not likely that the Central Government, in any case, intended to lay down the principles for guidelines for postings or transfers of the employees of NBI. By reserving to itself the power under Paragraph 5(4) of the amalgamation scheme for making a placement scheme the
- G Central Government appears to have intended to lay down the norms and
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guidelines for solving the problems that were likely to arise as a result of the merger. In this context, the word 'placement' appears to have been used in the sense of fitment into a position in the administrative set-up of PNB. In other words, what was contemplated was making of a scheme by the Central Government for the purpose of deciding at which level or in which position the employees of NBI were to be fitted in the administrative set-up of PNB. It was possibly for this reason that it was further provided in Paragraph 5(4) that while making the scheme the Central Government shall take into account relevant factors such as experience of the employee, etc.

In *New Bank of India Employees' Union v. Union of India*, [1996] 8 SCC 407, this Court had an occasion to construe the placement scheme, though in a different context. It held that the expression 'Placement' in clause 5(4) of the Amalgamation Scheme meant re-deployment of the employees of NBI, that is, fitment of those employees in a grade or rank or cadre in PNB and determining *inter se* seniority of those employees vis-a-vis the employees of PNB in that cadre or grade. It also held that under the placement scheme what has been provided and what was intended is that for determination of *inter se* seniority and for the purpose of promotions the computation of years of service had to be done in the manner provided in that scheme. This decision thus supports the view that we are taking.

If it was the intention of the Central Government that PNB should not deploy or transfer any employee of NBI till the placement scheme was made, it would have made an elaborate provision in that behalf in the placement scheme. Instead we find that with respect to deployment/transfer only a general provision has been made in Paragraph 3 of the scheme. Moreover, the said provision appears to have been made out of abundant caution. Even in absence of such a provision employees of NBI after they became employees of PNB could have been transferred by PNB subject to the service regulations and the existing awards and settlements. No employee of NBI could have thereafter successfully contended that PNB had no power to transfer them. So, the provision with respect to the transfer of workmen-employees was made in the placement scheme so as to remove any doubt, if any, with respect to the power of PNB to redeploy or transfer them to any of the offices or branches of PNB. When the Central Government provided in the placement scheme that redeployment

A or transfer may be made considering the suitability of the officer/employee, administrative exigencies and manpower requirements of PNB it did not fix any fresh or different norm for that purpose. Therefore, the said provision appears to have been made more by way of protection against discrimination rather than by way of fixing the principles and norms for their transfers. The only restriction placed on the power of PNB with respect to redeployment or transfers of the officers and workmen-employees of NBI is that the postings/transfers of workmen-employees will have to be made within the same linguistic area. Thus, we do not find anything in Paragraph 3 of the placement scheme which would indicate that redeployment/transfers of the officers/workmen employees of NBI were not contemplated by the Central Government till the placement scheme was framed by it. The important provision made in the placement scheme is with respect to fixation of *inter se* seniority and determination of seniority for the purpose of promotions. We are, therefore, of the view that the High Court was wrong in declaring the transfer orders of employees of NBI as bad on the ground that till the placement scheme was framed by the Central Government PNB had no power or authority to redeploy or transfer them.

E It was also contended on behalf of the respondents that the guidelines for transfers were framed by PNB in exercise of its administrative powers and, therefore, it could not have displaced the provision made in paragraph 5(2) of the Amalgamation Scheme which was statutory in character. In the alternative, it was contended that the said guidelines being contrary to the statutory amalgamation and placement schemes must be regarded as bad and the placement scheme cannot have the effect of validating the action taken by PNB under the said guidelines. These contentions, in our opinion, are misconceived as they are based upon an erroneous reading of the provision made in paragraph 5(2) of the Amalgamation Scheme with respect to its true nature and effect, which we have pointed out earlier. The Amalgamation Scheme did not deny the power of an employer to PNB to effectively and economically utilise its manpower and to make transfers when found necessary. As rightly submitted by Mr. Reddy, learned Additional Solicitor General, relying upon the decision of this Court in *Syndicate Bank Ltd. and Its workmen* (1966) 1 LLJ 440, that there can be no doubt that the banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch and that the management

is in the best position to judge how to distribute its employees between the different branches. Therefore, the action of framing guidelines and then effecting transfers in accordance therewith cannot be said to be inconsistent with or contrary to the statutory amalgamation and placement schemes, and the decision of the Andhra Pradesh High Court in *K. Prabhavathi v. The Deputy Divisional Manager, Syndicate Bank II*, (1995) BC 538, relied upon by Dr. Dhawan, learned senior counsel appearing for some of the respondents, can be of no help to him.

It was also contended that not a single branch of NBI was closed down as a result of amalgamation and, therefore, it was really unnecessary to transfer any workman employee of NBI. Only the employees of NBI were transferred and that would indicate that impugned transfers were made either to accommodate employees of PNB or for some other considerations. Thus the transfer orders were either arbitrary or discriminatory and so they were rightly declared as illegal and bad. In support of his contention that in cases where both the transferor and transferee are State or State instrumentalities, it is open to the court to review whether the terms and conditions of the transfer ensure "fairness in action" and non-arbitrariness, Dr. Dhawan relied upon the decision of this Court in *Gurnail Singh v. State of Punjab*, [1991] 1 SCC 189. Though "fairness in action" is now an established test to judge the validity of actions of State or State instrumentalities, we do not find, even after applying that test, that the impugned action of PNB was either arbitrary or discriminatory. In the affidavit of Malvinder Singh, Manager of PNB, filed during pendency of the special appeal before the High Court, the reasons for transferring the workmen employees of NBI have been stated. It is pointed out that at the time of merger, NBI had one head office, 16 Regional Offices, 2 Training Centres and 591 branches. After the amalgamation it had become wholly redundant to have more than one head office or regional office at the same place, that is, at the place where both PNB and NBI had their regional offices. Discontinuation of such offices had thus become necessary. The total number of employees working in such offices was approximately 2000 and it had become necessary to redeploy them elsewhere. Under these circumstances PNB had thought it fit to redeploy/transfer them and to frame the guidelines for that purpose. It is also pointed out that at the time of amalgamation PNB had given option to the employees of NBI either to continue in service under PNB or to leave it and in the letters of acceptance signed by all those employees it was clearly agreed that the basis of

- A computation of their seniority and such other matters will be determined in terms of the scheme that was to be issued by the Central Government and in the matter of other terms and conditions they shall be governed by the policy and procedures as in vogue with respect to employees of PNB. Therein it is also pointed out that productivity of NBI employees was as low as 27 lacs per employee while the corresponding figure with respect to PNB was 42 lacs per employee. Therefore, in order to make provision for the surplus staff and in order to efficiently utilise the manpower impugned transfers were made. After pointing out these relevant facts and circumstances it is stated that the object of these transfers was to avoid any retrenchment or adverse effect on their terms and conditions of service.
- C He has denied that in effecting those transfers PNB had acted contrary to any award/settlement/agreement in force. Therefore, the circumstance that not a single branch of NBI was closed down cannot lead to an inference that there was no surplus as stated and their redeployment and transfers were unnecessary. It was rightly contended by Mr. Reddy, learned Additional Solicitor General, relying upon the decision of this Court in *Union of India v. D. Mohan*, [1995] 3 SCC 115, that where service of an employee is transferable even though within a limited area, in special circumstances, he can be transferred outside that area. We are of the view that the respondents have failed to establish their case of discrimination. On the contrary, we find that PNB has acted in a fair manner. The guidelines framed by PNB clearly indicate that no wholesale transfers of NBI employees were to be made and the Zonal Managers were authorised to transfer only the surplus staff and that too within the same language area in their zones. Even while effecting such transfers they were required to follow the guidelines. Any transfer outside the language area zone was to be done with the approval of the Head Office.

- An attempt was made by Dr. Dhawan to show that NBI had not, in fact, made huge losses as contended on behalf of the appellants. What he submitted was that NBI was making profits till 31.3.90 and it was one of the most efficiently managed banks. By not preparing the balance sheets in a proper manner a wrong picture was projected to the effect that NBI had made huge losses. Obviously, we cannot go behind the finding of the Central Government and the Reserve Bank of India that NBI had made huge losses and that considering its financial condition it deserved to be merged with PNB. Moreover, the real reason for redeployment of some of the employees of NBI was that they had become surplus because of closing

down of the Head Office and some regional offices of NBI which were found unnecessary. Dr. Dhawan also relied upon certain instances to show that after transferring some employees of NBI, as being surplus, PNB had brought its own employees at those stations. It was submitted that this fact was not refuted by PNB before the learned Single Judge who had heard the writ petition and who had taken a note of it in his judgment. No details were given by the petitioners in this behalf as to exactly when and under what circumstances those transfers of employees of PNB were made. It is quite likely that they were routine rotational transfers. It is also possible that they were required to be made for some compelling reasons or administrative exigencies. It is, therefore, not possible to accept the contention that in the garb of redeployment of surplus staff what PNB had done was to accommodate its own employees.

On behalf of the respondents it was contended that Paragraph 5(2) of the Amalgamation Scheme protected the terms and conditions of service of the employees of NBI. Therefore, even after the officers and workmen employees of NBI became the officers and workmen employees of PNB they retained their earlier terms and conditions. In view of the transfer policy of NBI and the awards and bipartite settlements between NBI and its employees the workmen employees could not be transferred outside their stations. It was also submitted that though the Shastri Award recognises the right of the banks to transfer its employees it had really no relevance in view of the provisions made in the Amalgamation and Placement Schemes which are statutory in nature. Therefore, reliance placed by the appellants on the Shastri Award was misplaced. It was also submitted that in Paragraph 536 of the Shastri Award it is clearly mentioned that so far as members of the subordinate staff are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the persons so transferred. In this behalf Dr. Dhawan drew our attention to the Office Order dated 27th February, 1989 issued by the New Bank of India to its Regional Offices whereby their attention was drawn to its earlier Circulars dated 7.5.87 and 29.6.88 with respect to rotational transfers of staff and thereafter they were instructed to follow the guidelines laid down in that order while effecting such transfers. According to those guidelines, in case of workmen staff, the transfers were to be effected with the same station. It was further provided that in case of rotational transfers of surplus workmen staff they should be deployed at the same station only. On a careful reading of the said order

- A what we find is that it lays down guidelines for effecting rotational transfers of staff. The transfers under challenge were not rotational transfers. They were really in the nature of redeployment of surplus staff. Therefore, those guidelines even if they are treated as a part of terms and conditions of their service, being not applicable, cannot make the impugned transfers bad.
- B Though the petition and the learned counsel for the respondents have referred to certain awards and bipartite settlements nothing in particular was pointed out to show that the workmen employees of NBI could, under no circumstances, be transferred outside their stations. Our attention was also drawn by Dr. Dhawan to the guidelines issued by PNB with respect to transfer of its staff. We find that they also pertain to rotational transfers
- C and, therefore, the respondents cannot derive any benefit from it in their challenge to the deployment on being rendered surplus as a result of the amalgamation.

- D A grievance was also made on behalf of the respondents that some of the orders of transfers are not consistent with the guidelines dated 16th September 1993. If that is so it would be open to the respondents to draw the attention of the concerned authorities of PNB to such orders and seek their cancellation or modification. Obviously, PNB will have to consider such application or representations, if made, and take appropriate decision or pass orders in accordance with the said guidelines.

- E Except to the extent of the aforesaid observation we allow this appeal, set aside the judgment and order passed by the High Court of Allahabad in Special Appeal No. 877 of 1993 and dismiss Civil Misc. Writ Petition No. 39883 of 1993. However, in view of the facts and circumstances of the case, we pass no order as to costs.

V.S.S.

Appeal allowed.