

(2000) 04 CAL CK 0026**Calcutta High Court****Case No:** W. P. No. 15083 (W) of 1998

Kartick Das Bandopadhyay

APPELLANT

Vs

Chairman / Managing Director

RESPONDENT

Dena Bank and Others

Date of Decision: April 19, 2000**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 2(p), 36A

Citation: 104 CWN 1067**Hon'ble Judges:** Barin Ghosh, J**Bench:** Single Bench**Advocate:** Gopal Chandra Mukherjee, for the Appellant; R.N. Majumdar and S. Roy, for the Respondent**Final Decision:** Allowed**Judgement**

Barin Ghosh, J.

The petitioner, originally a clerk, joined the services of the respondent bank on 2nd February 1969 and since 1984 is working as Special Assistant. It is the case of the petitioner that there is a settlement dated 12th June, 1990 which provides the eligibility of the candidates seeking promotion from clerical cadre to officer cadre of the respondent bank as well as selection modalities. The selection modalities contained in the said settlement specifies that there shall be two channels of promotion, namely, seniority-cum-merit channel and merit channel. It is the case of the petitioner that in July, 1998 it was decided that 60 per cent of such promotions would be accorded from the seniority-cum-merit channel and 40 per cent through merit channel. The contended that he fared well in the written examination but not been selected for promotion. He stated that he is one of the senior most clerks working in the respondent bank and despite he having fared well in the written examination he has not been found fit to be promoted. He slated that on previous occasions too, proper selection had not been made and accordingly the Union was

constrained to raise objections. He stated that on previous occasions the Union raised objection in relation to one Mr. V. Ramaswami. It was pointed out that on the marks given to Mr. V. Ramaswami it appeared that he obtained 25.5. marks in the written examination for which only 25 marks was allotted. He stated that on previous occasions he had occasion to complain about awarding of marks in his favour. He then stated despite correcting 80 questions out of 100 questions he was not selected in the seniority-cum--merit channel and despite he being the senior most Special Assistant he was not found fit for selection but his juniors have been found fit for such promotion. He stated that the marks he ought to have had. Have been manipulated and reduced to deny his promotion. With this case he filed the writ petition seeking a direction for production of answer scripts and question papers in connection with the written test and to consider his promotion on the basis of seniority-cum-merit after looking into the answer scripts. The writ petition was moved on 15th September, 1998 upon notice when no one appeared on behalf of the respondents to contest the application. A direction was given to keep one post vacant in the promotional post. Directions were also given for filing of the affidavits. Instead of filing affidavit-in-opposition the respondent bank filed an application for vacating the interim order. In that application it was stated that the selection was made in accordance with law and in accordance with the procedure. The petitioner was found to have not succeeded and the contention of the petitioner that he has been given lower marks than what he is entitled to, is incorrect as the examination was conducted in the most impartial manner by the Institute of Banking Personnel Selection. In addition to that it was stated that the written test was common for all participants and the same was conducted on 15th March, 1998 by the Institute of Banking Personnel Selection, an organization established by the Government of India for conducting competitive test for recruitment and promotion of bank employees. It was then stated that upon receiving the list of marks obtained by various candidates who participated in the written test conducted by the Institute of Banking Personnel Selection, the respondent bank prepared separate merit list for the general category. Scheduled Caste category and Scheduled Tribe Category under each of the channels. It was then stated that under seniority-cum-merit channel 314 clerks belonging to the general category were promoted. It was then added that 61 clerks belonging to the Scheduled Caste Category and 30 clerks belonging to Scheduled Tribe category were promoted from the said channel to the posts reserved for Scheduled Caste category and Scheduled Tribe category respectively. It was stated that 207 clerks belonging to the general category, 41 clerks belonging to Scheduled Caste Category and 22 clerks belonging to Scheduled Tribe category were promoted from the merit channel in the general category. Scheduled Caste category and Scheduled Tribe Category respectively. But subsequently it appeared that the last selected Scheduled Caste candidate secured higher marks then the last selected general category candidate both in the seniority-cum-merit channel and the merit channel. In consequence thereof, it was stated that a few Scheduled Caste candidates though having scored more than

some of the selected general candidates, did not get the job and accordingly 24 and 19 Scheduled Caste candidates were given promotion under the seniority-cum-merit channel and merit channel respectively. Thereafter the result was declared. Despite that a writ petition was filed in the Bombay High Court wherein an interim order was passed on 31st July, 1998. This order, however, has not been produced before me. It is suggested in the said application that by that interim order a direction was given to prepare an over all merit list of seniority-cum-merit channel and to promote the first 314 persons and thereafter to promote the 85 Scheduled Caste and 32 Scheduled Tribe persons on the basis of their standing in the said merit list and also to prepare an over all merit list of person- in-merit channel and to promote first 207 persons from the general category and thereafter to promote 60 Scheduled Caste and 23 Scheduled Tribe persons on the basis of the standing in the respective merit lists. It was however, not stated as to whether the respondent bank has complied with the said direction.

2. A serious allegation was made in the said application to the effect that the writ petition was appearing in the combined list of the Hon"ble Justice Altamas Kabir as Listed Motion for a number of days in the bottom of the list. On 7th September, 1998 the Advocate-on-Record for the writ petitioner by a letter dated 7th September, 1998 addressed to the respondent bank informed that the writ petition would appear before the Hon"ble Mr. Justice Altamas Kabir on 16th September, 1998 but on 15th September, 1998 it was represented to His Lordship the Hon"ble Mr. Justice Altamas Kabir that despite service none is appearing to contest the application and accordingly the interim order was obtained.

3. This application was moved before His Lordship the Hon"ble Mr. Justice Altamas Kabir, when His Lordship observing that His Lordship has no determination at present to take up the matter, released the same.

4. Subsequent thereto the matter appeared before me.

5. In the meantime, however, the writ petitioner filed an affidavit- in-opposition to the said application. In that it was stated that the Institute of Banking Personnel Selection adopted illegal and motivated procedure to give promotion to those persons who belong to Union, namely. All India Dena Bank Employees Co-ordination Committee. It was also stated that despite there being an accepted promotional channel of seniority-cum-merit, the said union by force compelled adoption of a procedure which is not permissible, for opening the gate of promotion of juniors ignoring the seniors. He clarified that in the letter written by his advocate dated 7th September, 1998 it was mentioned that the matter would be taken up on Tuesday and the Tuesday was 15th September, 1998 and the date 15th September, 1998 was an obvious mistake. He reiterated that his answer scripts be produced. The respondent bank then filed an affidavit--in-reply and subsequently they also filed a supplementary affidavit to which a reply was given.

6. The supplementary affidavit and the reply thereto were filed inasmuch as on the basis of the allegation made in the affidavit-in- opposition to the application, it was contended that the entire modality of selection through the seniority-cum-merit channel was illegal.

7. Before me the writ petition itself was heard on the basis of averments made in the aforementioned pleadings. After conclusion of the hearing the parties filed their written Notes of Arguments confining themselves to the merit of the writ petition and only to the point that the modality of the selection through seniority-cum-merit was not proper.

8. It was argument by and on behalf of the petitioner that the channel being "seniority-cum- merit", the seniority must prevail over merit whereas in the instant case that has not been done and merit has prevailed over seniority and that is not permissible. On the other hand the respondents contended that the modalities of selection have been devised in a bipartite settlement and the same have been strictly adhered to. It cannot be said that the modality of selection through the seniority-cum-merit channel was not proper, contended the respondents. It was contended by the petitioner that the said settlement is a mere agreement and accordingly if the modality provided therein for selection through seniority-cum-merit channel is contrary to law. the same cannot be adhered to and in this connection the latest judgment of the Supreme Court was relied upon which I shall advert to later on. In order to answer that it was first contended that the said Supreme Court judgment is applicable for promotion of one grade of officers to another grade of officers and not from clerical grade to officers grade. It was contended that the settlement in question is a settlement within the meaning of Section 2(p) of the Industrial Disputes Act and is binding on the parties including the writ petitioner in terms of Section 18(1) of the Industrial Disputes Act and accordingly whether or not the parties have really intended in the settlement to the effect that the predominant feature of seniority-cum-merit promotion is promotion on merit is a question which can only be decided by the Industrial Tribunal upon a reference made to it u/s 36-A of the Industrial Disputes Act, 1947 and not by this Writ Court. It was also contended that though the law as laid down by the Supreme Court in terms of Article 141 of the Constitution binds Courts of India but the same cannot have any overriding effect of a settlement which has been under the provisions of the Industrial Disputes Act, 1947.

9. The relevant portion of the settlement dated 12th June, 1990 runs as follows:

3. ELIGIBILITY FOR INTERNAL PROMOTION :

a)	Clerical staff with the following qualifications and length of service will be eligible to appear for the written test. the written test.	
		No. of years of service in Clerical Cadre
		in Clerical Cadre
i)	Graduates with both parts of CAIIB	3 years
ii)	Graduates with Part-I of CAIIB	4 years

	No. of years of service in Clerical Cadre
iii) A Graduate in any discipline	5 years
iv) A matriculate with both parts of CAIIB	4 years
v) A matriculate with Part I of CAIIB	5 years
vi) Matriculate or equivalent	6 years
vii) Non-matric (matric appeared but failed)	8 years

b) In case of ex-serviceman, part service in the Army will be given weightage in the ratio 5.1 (5 years in the Army equal to 1 year of service in the Bank) subject to a maximum of two years, provided, the ex-serviceman employee has put in minimum 3 years of service in the clerical cadre of the Bank. This benefit is allowed only once in his career.

3. SELECTION MODALITIES:

a) There will be two channels of promotion from clerical cadre to officers cadre in JMC Scale/Grade I one is seniority-cum- merit channel and the other in merit channel. The vacancies, identified under Clause 2(b) will be apportioned between seniority-cum-merit channel earmarked for seniority, educational qualifications and written test are as under:

b) Marks for seniority One mark for every completed year of service 1/4th of one mark for each completed block of three months upto 15 years, for service beyond 15 years, two marks for each completed year of service and 1/2 of one mark for each completed block of three months (over and above 15 years) subject to the maximum

of 25 marks.

c) Marks for educational qualifications:

Graduate (for B.Sc. Agriculture: 5 marks)	3 marks
Post Graduate/Double Graduate	2 marks
CAIIB Part-I	2 marks
CAIIB Part-II	3 marks
Technical qualification (minimum 2 years degree or diploma from recognized University/Institute)	2 marks
Special qualifications Like C.A.. I.C.W.A.I., M.B.A. of recognised University/Institute	5 marks
However, the total marks for educational qualification shall not exceed 15 marks.	
Written Test	25 marks

Distribution of marks for seniority cum-merit Challan.

1.	Seniority	25 marks
2.	Educational Qualification	15 marks
	Written test	25 marks
		65 marks

Distribution of marks for merit channel:

1.	Educational Qualification	15 marks
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2.	Written Test	25 marks 40 marks
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The written test will be common for seniority-cum-merit channel and merit channel. However, under the merit channel the minimum qualifying marks in written test will be 50% for General candidates and 45% for SC and ST employees.

d) Out of the vacancies to be filled by internal promotion earmarked for seniority-cum-merit as well as merit channel. 11% and 7 1/2% of the vacancies will be reserved for SC and ST candidates respectively under each channel of promotion.

e) An employee applying for promotion need not specify the channel under which he/she is applying for promotion the channels. However, in case any applicant who does wish to take promotion if he/she is selected only under the merit channel the same shall be specified in the application for promotion and such cases shall not attract the debarment clause under para 9.

After administering written test to all the candidates who have appeared in the written test they shall be enlisted by adding marks applicable to them under each channel i.e. seniority-cum- merit channel and merit channel. However, only candidates securing minimum qualifying marks in the written test as prescribed in para 4(c) would be enlisted in the merit channel. Under each of these channels, separate merit list shall be prepared for general candidates and SC/ST candidates. Employees coming within the cut-off point in both the channels shall be retained for promotion from the seniority-cum-merit channel and their names will be deleted from the merit channel. The next eligible employee in the merit channel from which the name has been deleted shall be moved in his place.

f) In case, adequate number of employees not qualifying under the merit Channel, the vacancies including those of SC/ST will be transferred to seniority-cum-merit channel and will be filled by the employees in seniority-cum-merit channel.

g) In case of tie at the cut-off point in the merit list, the candidate seniormost in Bank's clerical service will be considered eligible for promotion. If there is a tie in the length of service also the employee senior in age will be considered for promotion.

h) Results:

- a) The results will be declared within one month from the final compilation and will be communicated by way of an All India Circular.
- b) The results declared by the Management will be final and binding on all concerned.

i) The Bank will initially retain the employees promoted under seniority-cum-merit channel in the same zone to the extent of vacancies, notified for general and SC/ST category for that Zone and the promotee officers in excess of the required number will be posted out of the Zone In the order of their preference depending upon the number of vacancies to be filled up from seniority-cum-merit channel promotions. This, however, will not restrict the management's right to post them anywhere in India.

j) The clerks promoted through merit channel will be liable to be posted out of Zone.

11. For the selection being the subject matter of the writ petition, however, the selection modalities were altered to some extent as appears from the relevant circular, relevant portion whereof is as follows :

5. SELECTION MODALITIES :

a) There will be two channels of promotion, in the ratio 60 : 40. The distribution of marks is as under:

	Seniority-cum- merit channel	Merit Channel
1. Seniority	25	
2. Educational qualification	15	15
3. Written Test	40	40
	80	55

The written test will be common for both the channels.

In accordance with the fresh guidelines received from the Government of India vide their Letter No. F.1/19/97-SCT(B), dated 11th November, 1997, there shall be no separate standards of evaluation for candidates of the Scheduled Caste/Scheduled Tribes for promotion, and assessment of all candidates for this purpose will be with reference to uniform standards. Therefore, the minimum qualifying marks in written test will be 50% for all the candidates including SC and ST candidates, under Merit Channel.

b) Marks for seniority : One mark for every completed year of service. 1/4th of one mark for each completed block of three months upto 15 years. For service beyond 15 years, two marks for each completed year of service and 1/2 of one mark for each completed block of three months (over and above 15 years) subject to maximum 25 marks.

c) Marks for educational qualification:

1	a) Graduate (other than B.Sc. Agriculture) : 3 marks		
b)	Graduate in B.Sc. Agriculture or Graduate (other than B.Sc. Agri.) with Post Graduate Diploma in Computer with duration of one year or more from University/Govt. Institute or Graduate in B.Sc. Agri. With Post Graduate Diploma in computer of one year or more		
	duration from University/Govt. Institute.	: 5	marks
2.	Post Graduate/Double Graduate/LL.B. :	: 2	marks
3.	C.A.I.I.B. (Part-I)	: 2	marks
4.	C.A.I.I.B. (Part-II) :	: 3	marks
	Special Qualification like C.A. I.C.W.A.	: 5	marks
	A.C.S. M.B.A. of recognised University/Institute		

However, the total marks for educational qualification shall not exceed 15 marks.

12. Therefore, while the settlement said that the written test shall consists of 25 marks and the qualifying marks in such test shall be 50% for general candidates and 45% for SC and ST candidates under the merit list, in the selection modalities for the year 1998 the marks of the written test were increased to 40 and the minimum qualifying marks in the written test was standardised at 50% for all candidates including SC and ST candidates under the merit channel. No attempt has been made to demonstrate as to on what basis these changes were adopted. It was not contended before me that by reason of a subsequent agreement the original settlement stood altered. It appears from the selection modalities adopted for the year 1998 that in accordance with the fresh guidelines of the Government of India, the minimum qualifying marks in the written test under the merit channel was made equal for all candidates.

13. If the Bank could change a portion of the settlement in its own wisdom and another portion thereof in view of an order of the Government, can it be said that the settlement is so untouchable that even a Writ Court cannot touch the same on the basis of the principle of law (sic), down by the Supreme Court, but then I need not go into such controversy as the selection modalities on the basis of which the subject selection has been made have not been adopted on the basis of the subject Settlement on by following the same strictly and accordingly the question resolving the any dispute as to whether the parties intended in the settlement to the effect that the predominant feature of seniority-cum-merit promotion is promotion on merit upon a reference being made u/s 36-A of the Industrial Disputes Act, 1947 does not arise for resolving the present dispute. The subject selection modalities on the basis whereof the subject selections have been made are a creation of the bank and it is not permissible for the bank to state that such modalities are the outcome of the settlement within the meaning of the Industrial Dispute Act, 1947.

14. Once it is decided that 60 per cent of the promotional vacancies shall be filled in through seniority-cum-merit channel and the remaining 40 per cent through merit channel, there cannot be any dispute that consciously it was decided that the predominant feature of the seniority-cum-merit promotion shall be based on seniority and merit and not on merit alone. It was consciously made seniority-cum-merit and not merit-cum-seniority. The question is despite having decided to make it seniority-cum-merit was in fact the same was made by the subject selection modalities or it was sought to be converted to merit-cum-seniority?

15. The seniormost person having the minimum basic qualification can get at the best 28 marks on account of seniority and educational qualification. If such a person does not achieve so well in the written test and secures around 40 per cent. i.e. 16 marks out of 40 marks in the written test, his aggregate would be 42 per cent. On the other hand a highly qualified and meritorious person though in the service for one year would get one mark on account of seniority and may get 15 marks on account of educational qualification and 35 marks in the written test, i.e. 87 1/2 per cent, aggregating to 51 marks. In such circumstances despite the seniormost person having the basic qualification and being average in merit would lose to a very young educated and meritorious person that is what is not permissible if the selection modality is seniority-cum-merit and not merit-cum-seniority.

16. As would be evidenced from the settlement dated 12th June, 1990 the same was brought into existence to brighten the scope of promotions to young and meritorious employees. It was, therefore, decided that 40 per cent of the promotional posts shall be earmarked for those young and meritorious employees for the promotional posts, it was decided that their seniority shall not count at all. Their suitability would be judged by their educational qualifications and outcome of their result in the written test. This was done having regard to the fact that at or before the said settlement the scheme of promotion was such that the seniors

would get the promotion despite large meritorious, young employees more suitable for promotion being present. The settlement, however, did not take away altogether the benefit of seniority. Consciously therefore, to achieve the object of brightening the scope of promotion to the young and meritorious employees, it was consciously decided not to affect the promotional opportunities of the senior employees. Therefore, while for young and meritorious employees it was decided that merit alone will count and such meritorious persons would fill up 40 per cent of the promotional posts, the remaining 60 per cent of the promotional posts were kept reserved for the seniors but not only on seniority but with merit too. One channel, therefore, was made seniority channel and the other channel merit channel. Consciously, therefore, the seniority channel was made on the basis of seniority-cum-merit and not merit-cum-seniority.

17. In B.V. Sivaiah vs. K. Addanki Babu, reported in (1998)6 SCC 720. the Supreme Court was concerned with what is meant by "Seniority-cum-merit". That question was answered by the Supreme Court in the manner as follows:

18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performances on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

18. After arriving at the said conclusion the Supreme Court noted the selection modalities of various banks on the criterion of seniority-cum-merit. From those it appears that separate marks were given for seniority, qualification, interview, performance etc. Noting the same the Supreme Court observed that it was not the case where minimum qualifying marks had been prescribed for assessment of performance and merit and those who secured the prescribed minimum qualifying marks were selected for promotion on the basis of seniority and in the circumstances it must be held that the High Court had rightly come to the conclusion that the mode of selection that was infact employed was contrary to the principle of seniority-cum-merit. In regard to another selection modality, where 55 per cent of the marks was allotted to seniority and the balance for qualification, performance and interview, on facts the Supreme Court found that the selection was made of only those officers who secured the highest number of marks amongst the eligible officers and accordingly held that in the circumstance the High Court has rightly held that the method of selection was contrary to the principle of

seniority-cum-merit. The third selection modality as was considered by the Supreme Court provided 15 per cent for seniority and the balance for job responsibility, placement/posting mobility, performance and interview. The Supreme Court held that the criterion of the said promotion policy cannot be regarded as being in consonance with the principle of seniority-cum-merit. While considering the fourth and the last selection modality, on facts, the Supreme Court found that 50 marks out of total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. The Supreme Court in those circumstance observed.

It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority." In the circumstances, the Supreme Court observed that it cannot be said that the selection has not been made in accordance with the principle of seniority-cum-merit.

19. In view of the said judgments of the Supreme Court, therefore, if the channel of promotion is seniority-cum-merit then the promotion must be given on the basis of seniority amongst those persons who have been adjudged to have the basic required merit. In the instant case that was not done. The way the selection modalities have been prescribed in the instant case, a person young but meritorious can always outsmart a very senior but moderately meritorious person. In the instant case even if a meritorious person applies through merit channel, he does not cease to lose the scope of getting promotion through seniority-cum-merit channel. The written examination is same for both channels and it is an admitted position that two lists are prepared one for the seniority-cum-merit channel and in other for the merit channel on the basis of the aggregate marks a person is entitled to, having regard to. his seniority, qualification and outcome of the written test. Thus, if there are only 100 promotional posts, 40 of them are sure to be obtained by meritorious young persons and there is every chance that the remaining 60 would also go in their favour unless, of course, the senior man is also equally meritorious.

20. It was submitted that the said judgment of the Supreme Court is not applicable in the instant case as in that case the Supreme Court was considering promotion from officer cadre to senior officer cadre and therefore, it has observed that assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit, but in so far as the present case is concerned it is a promotion from clerical cadre to officer cadre and in the clerical cadre there is no scope of recording appraisal of performance in the service record.

21. In *Sher Singh vs. Surinder Kumar*, reported in (1998)9 SCC 652 the Supreme Court was considering promotion to the post of Field Supervisors to be filled up by

promotion from amongst the clerks and also by direct recruitment. The criterion, for promotion from the post of clerk to that of Field Officer was seniority-cum-merit. The employer bank had adopted the criteria of merit-cum-seniority and not seniority-cum-merit. The Supreme Court held that such a selection was bad.

22. It is, therefore, clear that the assessment of merit is not necessarily to be made by assigning marks on the basis of appraisal of performance on the basis of service record. The Supreme Court did not observe that to assess the merit of a person to make him eligible, his performance on the basis of his service record is a must. Having regard to the facts of that case the Supreme Court made the said observation. Even without appraisal of performance on the basis of service record, one's merit may be judged. The same may be on the basis of qualification alone. The same may be on the basis of written examination alone. The same may be on the basis of combination of his performance in the written examination and interview. That may be a combination of his qualification and performance at written test and interview also. But what is significant is that there shall be a minimum eligibility criteria to assess the merit of a person to make him eligible. Once a person is so eligible then in the matter of promotion his seniority comes first. In other words if the criteria for assessing merit is a combination of qualification and written test and if a minimum marks, say 40, is prescribed to make a person eligible and if the seniormost person barely gets 40 but a person not so senior gets 70, even then the senior person getting 40 would be higher up in the list or panel to be prepared for promotion on the basis of his seniority than the person more meritorious to him but junior in service. If that is what is not done then the promotion would be tantamount to depend upon merit-cum-seniority and not seniority-cum-merit.

23. In the instant case despite the criterion being seniority-cum-merit but on facts it is not disputed that the selection was made on the basis of merit-cum-seniority.

24. It is true that the Supreme Court does not enact but then the law declared by the Supreme Court binds all Courts in India. The law is made by legislature. The Supreme Court interprets the same. Once the Supreme Court by interpreting the law made by the legislature states what the law is, until and unless the legislature intervenes in the meantime, the law so pronounced to be, is the law enforceable at any Court in India. That exactly what has been sought by the petitioner in the instant case.

25. There cannot be any dispute that the Industrial Disputes Act, 1947 is a Special Act. There is also no dispute that the settlement in question is a settlement within the meaning of the said Act. There is also no dispute that the said settlement is enforceable in terms of the said "Act. By reason of the aforementioned judgments of the Supreme Court no portion of the Industrial Disputes Act, 1947 has been touched. There is, therefore, no question of applying the principle of *genrealia specialibus non derogant*" as the interpretation of law made by the Supreme Court in the said judgments is not, nor can be said legislation. Therefore, reliance upon he

judgment of the Supreme Court in L.I.C. vs. D. J. Bahadur. reported in AIR 1980 SC 2181 is totally misplaced.

26. Contention, however, is that the Industrial Tribunal and not this court is competent to decide whether or not the parties have really intended in the settlement to the effect that the predominant feature of seniority-cum-merit promotion is promotion on merit. As aforesaid selection modility as provided for in the subject settlement had been changed by the bank itself while making the selection modality for the current selection. The bank having done so should not be permitted to say that the subject selection modalities can only be questioned before the Industrial Tribunal.

27. In any event settlement within the meaning of the Industrial Disputes Act, 1947 is nothing but an enforceable agreement. While purporting to enforce such an agreement if a legal right of a citizen established on the basis of the law interpreted by the Supreme Court is denied. Writ Court can always redress the same. Interpretation of a document is a question of law, predominant intent must be gathered from the document alone and from nowhere else. It cannot be said that in the matter of such interpretation industrial Tribunal would be more convenient.

28. In the result I hold in favour of the petitioner but then having regard to the involvement of large number of persons. I do not direct setting aside of the entire selection but direct the bank to give promotion to the petitioner as the petitioner is a Graduate and therefore has the basic qualification and he having scored 12.40 marks out of 40 marks in the written examination and there being no minimum marks fixed for assessing the merit in such examination. In the matter of giving such promotion to the petitioner, the bank shall have no difficulty as it has already created extra posts for giving some promotions and by virtue of an interim order of this court has kept one promotional post vacant, but has not stated in any of the pleadings referred to above, that it has not so kept the said vacant post.

29. The writ petition is allowed to the extent as above. There shall be no order as to costs. Let urgent xerox certified copies of this judgment, if applied for, be delivered to the learned Advocates for the parties.

Stay prayed for is refused.