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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
PRINCIPAL BENCH, NEW DELHI.

Original Application Nos : 430/95 and 487/95.

Date of Decision: 26.10.99

R.D.Verma & Anr.	Applicant.
S/Shri S.K.Gupte and G.D.Gupta	Advocate for Applicant.

Versus

Union of India & Ors.	Respondent(s)
Shri R.R.Bharati.	Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. J.L.Negi, Member(A).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(R.G.VAIDYANATHA)
Vice-Chairman

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,NEW DELHI.

ORIGINAL APPLICATION NOS. 430/95 and 487/95

the 26th day of OCTOBER 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha,Vice Chairman

Hon'ble Shri J.L.Negi,Member (A)

1. R.D.Verma
R/o 183 Housing
Board Colony
Jharsa Road
Gurgaon. ...Applicant in OA 430/95

By Advocate Shri G.D.Gupte.

2. B.C. Gonga
R/o Sector I
Quarter No.89
R.K.Puram,
New Delhi. ...Applicant in OA 487/95

By Advocate Shri S.K. Gupta.

1. Union of India through
The Secretary,
Deptt. of Revenue,
(Central Board of
Excise and Customs
North Block,New Delhi.

2. The Collector of
Central Excise,
Central Revenue Building
I.P.Estate,
New Delhi.

3. The Chairman
Central Board of
Excise and Customs
Deptt. of Revenue,
Ministry of Finance,
North Block,New Delhi. ...Respondents.

By Advocate Shri R.R.Bharati.

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O R D E R

{Per Shri Justice R.G.Vaidyanatha,Vice Chairman}

These are two applications filed by respective applicants under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply in both the cases. Since common questions arise for consideration in both the cases we have heard common arguments addressed by the counsel on both the sides.

2. The applicant in OA 430/95 is Shri R.D.Verma who is now working as Inspector Central Excise at New Delhi.Originally he was appointed as Inspector, Central Excise, in the Bombay Collectorate in the year 1978. The applicant hails from Haryana and it was difficult to work in far of place at Bombay. On 26.2.1979 the applicant gave an application for transfer to Delhi Collectorate. As per the then existing Rules dated 12.12.1958 Class III employee who seeks transfer in the first three years of service he will not loose his seniority. The applicant came to be transferred only in September 1983 with a condition that on transfer his service at Bombay Collectorate will not count for the purpose of seniority. He was relieved from Bombay Collectorate and he joined Delhi Collectorate on 17.8.1983 and he was treated as junior most Inspector and he was placed below all permanent and temporary incumbents at Delhi Collectorate. It is stated that one Shri A.D.Deshpande was similarly placed and he lost his seniority on his transfer from Pune Collectorate to Bombay Collectorate. He filed an application

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before CAT Mumbai Bench. His application was allowed by the Tribunal and the order was confirmed by the Supreme Court by holding that Shri Deshpande will not loose his earlier service on transfer inspite of the undertaking given by him. The applicant made representation to the department that in view of the judgement in Deshpande's case his case should be reviewed. The department issued an order dated 30.9.1992 partly accepting the request of the applicant about restoration of seniority but provided a condition that no notional promotions will he given even after refixing the seniority. Then the applicant made representation seeking the benefit of notional promotion. But the department has since rejected his representation by letter dated 2.3.1994. It is stated that under 1958 Rules, the applicant is entitled to the benefit of past service at Bombay Collectorate for the purpose of seniority. The conditions imposed in the transfer order of 1983 and the undertaking given by the applicant consequentally are illegal conditions and should not be enforced. Hence the applicant has approached this Tribunal for quashing the proviso in the transfer order dated 4.9.1993 which provides that applicant's past service at Bombay Collectorate will not be counted for the purpose of seniority at Delhi Collectorate and for a direction to the respondents to re-fix the seniority of the applicant in terms of the Board circular dated 12.2.1958 and grant all consequential benefits including promotion etc. and pay him all monetary benefits.

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3. In OA 487/95 the applicant is Shri B.C. Gogna. He was initially appointed as Inspector, Bombay Collectorate and on his representation he was first transferred to Chandigarh Collectorate which he joined on 20.7.1979. In view of the transfer the applicant lost 4 years of service of Bombay Collectorate from 1975 to 1979. Then in 1979 the applicant made one more request for transfer from Chandigarh Collectorate to Delhi Collectorate. He sent number of reminders to Delhi.Only after 10 years in 1989 the applicant was transferred and joined the service at Delhi Collectorate in 1989. Now the applicant is being deprieved of his earlier service not only of Bombay Collectorate but also of Chandigarh Collectorate. The applicant has also challenged that forfeiting of the earlier service is illegal and the applicant in OA 430/95 which we have referred to above.

In this OA the applicant's prayer is that the impugned order dated 2.3.1994 be quashed, that the circular dated 20.5.1980 is ultra virus and liable to be quashed and it may be declared that 1980 circular will not apply to the case of the applicant since he had given the request for transfer earlier and for a dseclaration that the applicant is entitled for the benefit of past service at the Bombay Collectorate and Chandigarh Collectorate for the purpose of seniority and for a direction to the respondents to refix his seniority on the basis of total length of service in all the Collectorates and for all consequential benefits like promotion etc.

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In both the OAs the respondents have filed seperate defences but the defences is common.

The desfence is that as far as inter-Collectorate transfers are concerned, the Bard of Central Excise has issued fresh instructions as per circular dated 20.5.1980 providing certain conditions. One of the important conditions of the circular is that in compassionate transfer the incumbent will not be entitled to count the services rendered in Bombay Collectorate on transfer to another Collectorate on compassionate ground for the purposeof seniority. It is stated that 1958 circular is no longer in force. It was dis-continued after 1972. Even otherwise it is stated that transfers are effected subsequent to 1980 circular and therefore both the applicants were transferred in pursuance of the 1980 circular and hence they are governed by 1980 circular and not 1958 circular. Both the applicants accepted the transfer under 1980 circular and they have given necessary undertaking in forfeiting earlier service. They cannot complain about the loss of previous service for the purpose of seniority. The applicants never challenged the order of transfer for number of years and now it is too late to challenge the conditions of transfer. Both the applicants have accepted the terms and conditions of the transfer orders. It is also stated that the case of A.D.Deshpance is not similar to the case of both the applicants. Since both the applicants are transferred on their own request on compassionate grounds they cannot claim the benefit of past service for the purpose of seniority in terms of the conditions of 1980 circular.

(5) Shri G.D.Gupte counsel for the applicant in OA 430/95 and Shri. S.K.Gupta counsel for the applicant in OA 487/95 contended that the case of both the applicants are governed by the 1958 circular and they have to get the benefit of past service for the purpose of seniority. They argued that 1980 circular is not valid and even otherwise it will not apply to the case of the applicants who had given request for transfer prior to 1980 circular and therefore their case should be considered with reference to 1958 circular and not 1980 circular. On the other hand Shri R.R.Bharati, counsel for the respondents states that both the applicants were transferred after 1980 circular came into force and they were transferred in pursuance of the conditions mentioned in 1980 circular and the applicants accepted the conditions and they have given necessary undertaking and it is too late to question or challenge 1980 circular. They argued that 1958 circular was not in force when the applicants came to be transferred in 1983 and 1989. When specific circular is issued prescribing the conditions then the circular of 1958 cannot be applied. He therefore argued that the cases of both the applicants squarely falls under 1980 circular which is in force. That past services of the earlier Collectorates will not count for the purpose of serniority in the new Collectorate. Both the counsels have referred to some decisions on the point which we will considser.

(6) In the light of the arguments addressed before us, the short point for consideration is :-

> Whether the applicants on transfer on compassionate ground will loose the benefit of past service for the purpose of seniority or not?

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7. The learned counsel for the applicants mainly placed reliance on the 1958 Circular, whereas, the learned counsel for the respondents contended that 1958 Circular is no longer in force after the new Circular of 1980 was issued.

No doubt, on an earlier occasion the Board has accepted the request of the applicants partially, but without giving the benefit of notional promotion on the basis of seniority, but this decision has been subsequently reversed by the Board on re-consideration. Therefore, we have to decide on first principles whether the applicants who were transferred on compassionate grounds are entitled to the benefit of past service for the purpose of seniority. There cannot be any dispute that past service, even in such a case counts for the purpose of pay fixation, pensionable service, leave etc. It may also count for the purpose of eligibility for the purpose of promotion if there is a condition of minimum number of years in a particular grade for the purpose of promotion. Suppose for the next promotion the criteria is 5 years service as an Inspector of Excise, then for this limited purpose his service in the previous Collectorate can be counted though not for the purpose of seniority. We would presently refer to number of decisions bearing on the point which were cited by both the counsels and some decisions of the Supreme Court which we have come across in matters like this. The dispute in this case is only on the question ~~of~~ whether past service in such a case count for the purpose of seniority or not.

8. No doubt, the 1958 Rules supports the case of the applicants, provided that circular is applicable to them. That the applicants had given applications for request transfer some

time in 1978 or 1979, the transfers are effected in the first case in the year 1983 (OA 430/95) and in the second case in the year 1989 (O.A. 487/95). When transfers are effected after the 1980 Circular, the question of applying 1958 Rules does not arise at all. It is true that 1980 Circular does not in so many words say that 1958 Circular/Rules are repealed or amended. But, when a new circular is issued by the Board on a particular subject and transfers are made in pursuance of the new Circular, then the natural corollary or inference is that old circular is no longer in operation and will not be applicable. It is not the applicant's case that their transfer is in pursuance of the 1958 circular. On the other hand, the admitted materials on record clearly show that the applicants were transferred in pursuance of the 1980 Circular and they gave an undertaking in pursuance of the 1980 circular and therefore, the question of going back to 1958 Rules will not arise at all.

9. The applicants have placed reliance on the case of one A.D.Deshpande Vs. Union of India (O.A. No.511/86) which was decided by the Bombay Bench of the Tribunal by order dt.19.11.87. A copy of the Judgment is annexed to the OA. No doubt, the said order of the Bombay Bench came to be confirmed by the Supreme Court in Civil Appeal No.1697/88 by order dt. 16.1.1999. In our view, Deshpande's case is not applicable to the applicants for more than one reason. In Deshpande's case, the transfer ~~is~~ was effected in 1972, when 1958 circular or rules ~~are~~ were very much in force. Therefore, both the Tribunal and the Supreme Court held that when the transfer was made the 1958 rules were in force and as per that rule if the transfer is made within three years there

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will be no loss of seniority. Even if an undertaking was given by Mr.Deshpande, it was contrary to para-v of the Rules and therefore, the undertaking is invalid and he will not lose the past service for the purpose of seniority. The Tribunal also made one more point viz. that earlier Mr.Deshpande was working at Pune which was in Bombay Collectorate and then the Bombay Collectorate was sub-divided into two Collectorates viz. Bombay Collectorate and Pune Collectorate. Mr.Deshpande who was working Pune in Bombay Collectorate was not given option to become part of Pune Collectorate after Bombay Collectorate was sub-divided. This was one additional grounds taken and accepted by the Tribunal to hold as to why Mr.Deshpande should not lose past service on transfer since he was not given option of Collectorate when the main Collectorate was sub-divided into two Collectorates. At any rate, that was an order of transfer in 1972 when the 1958 Circular was in force and long prior to the 1980 Circular. Since the applicants were transferred subsequent to 1980 and are covered by the 1980 circular, the question of applying Mr.Deshpande's case or 1958 Rules will not arise at all.

10. Then, reliance was placed on another unreported Judgment of Patna Bench of the Tribunal dt. 20.7.1995 in OA 601/93, copy of which is annexed to the OA. That was a case where the request for transfer was given in 1978 and the transfer was effected in 1978 from Jaipur Collectorate to Patna Collectorate. Therefore, that is also a case where the transfer was effected prior to the 1980 Circular. Therefore, as per the 1958 Circular the Patna Bench of the Tribunal held that the past service will count for the purpose of seniority and this came to be confirmed by the Supreme Court by order dt. 31.3.1998 in Civil Appeal No.6734/96.

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In our view, the above decision will also not apply to the present applicants' since their transfer is subsequent to 1980 after the issuance of the 1980 Circular and therefore we will have to see the terms and conditions under which the applicants came to be transferred and whether they are entitled to retain the past service for the purpose of seniority under the 1980 circular.

Then, reliance was placed on a Judgment of the Ernakulam Bench of this Tribunal dt. 9.3.1995 in OA 1178/94, where again, it was a case under the 1958 circular and the transfer was prior to the 1980 circular. In that case, the official had been transferred in 1975 much prior to the 1980 Circular.

Therefore, we find that all the above cases on which reliance has been placed by the learned counsel for the applicants were cases where the transfers had been effected prior to 1980. The Tribunals have held that at that time 1958 circular or rules were in force and as per that rule if the transfer is made in the first three years there will be no loss of previous service for the purpose of seniority. The question of considering the effect of 1980 circular was neither raised nor decided in those cases.

11. On the other hand, the respondents have relied on few decisions which are under the 1980 Circular.

In OA 1718/89, the Principal Bench of this Tribunal by Judgment dt. 3.4.1991 found that the applicant in that case had joined Bombay Collectorate on 12.12.1978 and on 7.5.1979 he made a request for transfer to New Delhi on compassionate grounds. He sent one more representation in January, 1980. Subsequently, he came to be transferred in February, 1982. Then, the order of

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transfer was issued in pursuance of the 1980 Circular imposing a condition that the transferee will have to give an undertaking that he will not get the benefit of past service for the purpose of seniority. After joining the Delhi Collectorate, the said official went on making representation claiming seniority on the basis of his past service, which came to be rejected by the Administration and therefore he approached the Principal Bench of the Tribunal at New Delhi. Then, the Division Bench of this Tribunal considered the effect of the Board's Order dt. 20.5.1980 and the conditions mentioned therein for transfer on compassionate grounds and in particular the loss of past service for the purposes of seniority in the new Collectorate and held that the applicant who has been transferred after the 1980 circular cannot get the benefit of past service for the purpose of seniority. Throughout the order, the Tribunal has referred to the Circular dt. 20.5.1980 as the circular issued by the Central Board of Excise and Customs (for short, CBEC). In view of the 1980 Circular, the Tribunal rejected the contention of the applicant in that case that he should get the benefit on the basis of past service in the previous collectorate.

The respondents are also relying on an unreported Judgment of the Bombay Bench of the Tribunal dt. 16.7.1992 in OA 461/92. The official had been transferred in 1988 from Bombay Collectorate to Nagpur Collectorate. The question was whether the service in the past Collectorate will count for benefits of seniority in the new Collectorate. The Tribunal referred to the Board's Circular dt. 20.5.1980 and held that in view of the conditions mentioned therein that the past service could not count for the purpose of seniority.

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Therefore, we find that in both the above decisions, the transfers were effected subsequent to 1980 circular and both the Division Benches have referred to the Board Circular and held that the past service cannot count for the purpose of seniority.

12. At one stage, the learned counsel for the applicants contended that the circular dt. 20.5.1980 is not a Board's Circular, but it is only a letter written by the Under Secretary. But, a perusal of the circular shows that it is issued by the Government of India, CBEC. It is addressed to all the Collectorates of Central Excise and Customs. Then, in the body of the letter it is stated that the Under Secretary is writing this letter as directed. Then, in para 2 the words used are :

> "It has now been decided to delegate powers to the Heads of Departments .....for transfers on compassionate grounds....on the following conditions."

Therefore, a perusal of the Circular shows that it is in the nature of a general circular issued by the Under Secretary as directed by the Board and the tone of the circular shows that it is a decision of the Board and not the personal opinion of the Under Secretary who has signed that letter. The fact that copies are sent to all the Collectorates for infomation and action itself shows that it was the direction of the Board. This circular has been accepted and acted upon as the circular of the Board in the above two Judgments which we have discussed above. In fact, the learned counsel for the applicants even made a request that the Tribunal may send for the concerned file of the Board to find out whether it is the Board's decision or not. In our view, such an exercise is not necessary for more than one reason. We have pointed out that two Division Benches of this

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Tribunal followed the circular as the circular of the Board. Another Division Bench of the Bombay Bench of the Tribunal to which one of us was a party (Justice R.G.Vaidyanatha, Vice-Chairman) in the case reported in 1998 (3) SLJ 268 (Maheshchandra Gahatyari and Ors. Vs. Union of India through the Secretary and Ors.) have referred to the Circular as a Board's circular and on the basis of the 1980 conditions, the said Division Bench has taken the view that past service will not count for the purpose of seniority, though it may count for the purpose of eligibility or experience in that grade.

13. Now, we may make useful reference to the decision of the Apex Court in Renu Mullick (Smt.) reported in (1994 SCC (L&S) 570. In that case, the Supreme Court has accepted and acted upon the 1980 Circular. In particular, we are extracting the observations of the Supreme Court in para 2 of the reported Judgment which reads as follows:

> "According to the executive instructions dt. May 20, 1980, **issued by the Central Board of Excise and Customs,** a Group 'C' Officer, when is not entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge."
> (underlining is ours)

Therefore, we find that Supreme Court had acted upon the 1980 Circular as the circular issued by the CBEC. When Tribunals and Courts including the Supreme Court have acted upon the 1980 Circular as the one issued by the Board, now this Tribunal cannot say that it is a circular issued by the Under Secretary and not by the Board. We have already referred to the contents of the Circular to show that it is issued by the Board, though signed by the Under Secretary. The Supreme Court has accepted and acted upon the Circular as the one issued by the Board. Again in para 4, the Supreme Court has reiterated the position viz. executive

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instructions dt. 20.5.1980 "issued by the Central Board of Excise and Customs" provide for inter-collectorate transfers on certain conditions.

The Supreme Court has clearly held that in view of the conditions in the circular the past service will not count for seniority, but however, it may count for eligibility viz. for the purpose of experience in the grade to get the next promotion.

In one of the present applications, there is challenge to the 1980 circular as illegal and arbitrary etc. We have seen now that the Supreme Court has acted upon the circular and applied the circular and held that in view of the circular, though the past service will not count for seniority it will count only for the purpose of eligibility viz. experience in the grade. Therefore, the argument about invalidity of the circular either on the ground that the conditions are illegal or on the ground that it is not issued by the Board cannot be accepted in view of the acceptance and acting upon the circular by the highest Court of the land.

14. As already stated a Division Bench of the Bombay Bench of the Tribunal which we have referred to earlier in the case reported in 1998 (3) SLJ 268 has also considered this question in detail and held that the past service will not count for seniority though it may helpful for the purpose of experience or eligibility.

This type of putting conditions in cases of transfer on compassionate grounds is not something new or unknown to Service Law. Many departments of the government have issued such circulars imposing certain conditions in cases of compassionate

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transfers. We are only mentioning few cases just to show that the conditions have been acted upon and accepted by the Courts and Tribunals and there is nothing illegal about it.

In the case of K.A.Balasubramanian Vs. Union of India and Ors. ((1987) 4 ATC 805), a Full Bench of this Tribunal has considered similar circular issued by the Ministry of Defence regarding conditions in cases of compassionate transfer held that the past service will not count for the purpose of seniority though it may be used for the purpose of eligibility for consideration for promotion.

Again we have a decision of the Apex Court in 1996 (1) SC SLJ 128 (Union of India & Ors. Vs. C.N.Poonapkpan), where again the Supreme Court has considered a similar circular of a different department and held that in view of the Circular, on Compassionate transfer the previous service will not count for seniority though it may count for eligibility.

We have also another decision of the Apex Court in Gurusharan Singh Vs. Union of India & Ors. ((1995) 29 ATC 109), where there is again a reference to a circular of Ministry of Defence about conditions in case of compassionate transfers where again it is held that past service will not count for seniority in such a case.

15. One of the grounds pressed into service by the learned counsel for the applicants is that they are not governed by this 1980 circular since they have submitted their request for compassionate transfer prior to 1990 and therefore they are governed by the 1958 circular. Mere sending a letter or a request for transfer on compassionate grounds will not create any legal right. There is nothing as such like vested right when one

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sends a letter praying for transfer on some personal grounds. The concerned Competent Authority may or may not grant it. Therefore, we do not find any force in the submission that the fact that the applicants had sent the letters for compassionate appointment prior to 1980 will create any vested right in their favour. It is not a statutory application. The application may be considered or not by the Competent Authority. There is no legal application on the Competent Authority to pass an order o such an application one way or the other and that too with in particular time. This is purely a procedural matter and rules can be changed at any time by Government in its wisdom. The Board has issued the circular in 1980 prescribing certain conditions under which compassionate transfers can be granted. Then, what is more, the transfers of the applicants are done in pursuance of the 1980 circular and therefore they cannot say that they are not governed by the 1980 Rules. Though the applicants might have sent their applications in 1978 or 1979, orders came to be passed about transfer in 1983 in one case and in 1989 in the other case.

Let us see the order in the first case (O.A. 430/95). The applicant has only produced the relief order issued by the Bombay Office which is at page 18 of the paper book. Even this order contains an important condition that the applicant will not get the benefit of past service and he is treated as a new entrant in the Delhi Collectorate. This order is issued based on the Board's order viz. Estasblishment Order No.273/83, which is at page 82 of the paper book. The very opening words of this transfer order reads as follows :

> "In pursuance of the Board's letter F.No.A.22015/34/60.AD III-B dt. 20.5.1980, the following Inspectors of Central Excise working in the collectorate mentioned against their names are hereby transferred to Central Excise

Collectorate, New Delhi onh Inter-Collectorate transfer basis on the following terms and conditions."

Sixteen Officers are transferred by the above order and one of them is the applicant in O.A. 530/95 and his name is at Sl.No.10 in this order. The condition No.1 is that the transferee will not count the past service in the parent Collectorate for the purpose of seniority in the new Collectorate. Therefore, the transfer order makes it very clear that it is issued in pursuance of the Circular dt. 20.5.1980, then the necessary condition is imposed. What is more, in pursuance of this condition in the transfer order the applicant has given a written undertaking which is at page 86 of the paper book agreeing that he is foregoing his past service.

Whatever may be the date the applicant might have sent his request for transfer, he is transferred in pursuance of the Board's Circular dt. 20.5.1980 which is clearly mentioned in the order of transfer and the applicant has accepted the same and has given an undertaking in 1983 itself. It is too late in the day now to say that he is not governed by the 1980 circular.

Similarly, in the second case viz. OA 487/95, the respondents have produced Ex. R-1 at page 71 of the paper book which is the Establishment Order No.95/89 of the Central Excise collectorate, Delhi. The opening words of the order of transfer reads as follows :

> "In pursuance of Board's letter F.No.A-22015/34/80-AD III-B dt. 20th May, 1980, the following Inspectors of Central Excise & Customs working in the Collectorates mentioned against their names are hereby transferred to Central Excise Collectorate Delhi on Inter-Collectorate transfer basis on the following conditions."

Seven Officers have been transferred in this transfer order of

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which the applicant's name B.C.Gogna is at Sl.No.7. There is a specific condition that the past service will not count for the purpose of seniority in the Delhi Collectorate. It is not disputed that the applicant has accepted this condition and has given an undertaking and then he has been relieved and then he came to Delhi Collectorate.

Therefore, both the orders of transfer in favour of both the applicants clearly mentioned that they are transferred in pursuance of the Circular dt. 20.5.1980. The Competent Authority has exercised its power to transfer under the 1980 Circular and granted transfers subject to certain conditions as mentioned in the 1980 Circular. Therefore, the date of request or the date of the letter of the applicants seeking transfer is not material since it does not create any vested right or legal right to get a transfer. In the very nature of things compassionate transfer is not a vested or a legal right. It is only a concession given by the Government for transfer on compassionate grounds in deserving cases. In this particular case, the Competent Authority has exercised the discretion in granting compassionate transfer in 1983 in one case and in 1989 in the other case long after the issuance of the circular and further orders clearly mentioned that they are issued in pursuance of 1980 circular and therefore both the applicants are fully aware ~~and~~ that they are governed by the 1980 circular and they have even given necessary undertaking under the 1980 circular and hence they are bound by the conditions imposed by 1980 circular and they cannot claim the benefit of past service for the purpose of seniority. May be at one stage the Board had decided to accept the request of the applicants for grant of earlier service for the purpose of

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seniority, but again on reconsideration they have rejected the claim of the applicant and we find that the rejection is purely within the terms of 1980 circular.

16. We must also bear in mind the object of the rule. A person working in Bombay on his own request gets transfer and joins Delhi Collectorate after four years or five years or later. An officer in Delhi Collectorate will be expecting his promotion on the basis of his local seniority. If some person comes from different collectorate and sits on his head it will affect his seniority, particularly when the officer coming to Delhi on his own request due to personal difficulties. That is why, on compassionate grounds the officer is not entitled to TA/DA, he is not entitled to joining time and he is not entitled to count the past service for the purpose of seniority. It is an administrative decision taken by the Board on the basis of a sound policy which has been accepted by the Courts and Tribunals and we have already referred to two three decisions of the Supreme Court where such circulars regarding compassionate transfers have been acted upon. The applicants were made fully aware of the conditions and therefore there is no question of they being taken by surprise. The applicants cannot get any benefit from the 1958 circular since when their transfers were ordered in 1983 and 1989, 1980 circular was very much in force and the orders of transfers are issued under the 1980 Circular and necessary undertakings have been given by the applicants in pursuance of the 1980 circular. The action of the department now rejecting the claim of both the applicants denying the benefit of

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the past service for the purpose of seniority is perfectly justified and valid. Hence, in our view, there is no merit in both the applications and are liable to be dismissed.

17. In the result, both the applications O.A. NO.430/95 AND 487/95 are dismissed. No order as to costs.

(J.L.NEGI)
M(A)

(R.G.VAIDYANATHA)
V/C.

B.