

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 643/2009, 650/2009, 835/2009 and 400/2010.

.....Monday, this the 16 th day of May, 2011.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.643/2009

1. Joju M Mampilly,
Inspector of Central Excise,
O/o the Commissioner of Central Excise,
Central Revenue Building,
I.S.Press Road, Kochi-18.
2. K.Sreevallabha Senan,
Inspector of Central Excise,
O/o the Superintendent of Central Excise,
Service Tax C Range, Central Excise Bhavan,
Kathrikadavu, Kaloor, Kochi-682 017. - Applicants

(By Advocate Mr Shafik M Abdul Khadir)

v.

1. Union of India represented by
Secretary,
Department of Revenue,
Ministry of Finance, New Delhi-110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001.
3. The Chief Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
I.S.Press Road, Cochin-682 018.
4. Dasan P.A.,
Tax Assistant, O/o CDR, CESTAT,
FKCCI Building Complex,
K.C.Road, Bangalore.
5. Sabu Karunakaran,
Tax Assistant,
O/o the Commissioner of Central Excise,
Customs & Service Tax,
NGO(A) Colony, Tractor Road,
Thirunelveli-627 007.

6. Jayadeep C,
Inspector of Central Excise,
O/o the Commissioner of Central Excise, Customs,
and Service Tax, II Division,
Elgi Building, Trichy Road,
Coimbatore.
7. Jyothi Sukumaran,
Inspector of Central Excise & Customs,
Trichur Division,
Kerala.

Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1 to 3)

(By Advocate Mr U Balagangadharan for R.4)

(By Advocate Mr O.V.Radhakrishnan, Senior with Mrs K Radhamani Amma for R.5 & 6)

O.A.No.650/2009

1. Cochin Customs Ministerial Association,
represented by its Secretary, Immanuel Hilton Antony,
O/o the Commissioner of Customs, Customs House,
Cochin.
2. P.K.Subhash Kumar,
Lower Division Clerk,
O/o the Commissioner of Customs, Customs House,
Cochin.
3. A.K.Siju,
Tax Assistant,
O/o the Commissioner of Customs, Customs House,
Cochin.
4. Jimmy Mathew,
Lower Division Clerk,
O/o the Commissioner of Customs, Customs House,
Cochin.

Applicants

(By Advocate Mr Shafik M Abdul Khadir)

v.

1. Union of India represented by
Secretary,
Department of Revenue,
Ministry of Finance, New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.

3. The Chief Commissioner of Customs & Central Excise, Kerala Zone, Central Revenue Building, I.S. Press Road, Cochin-682 018.
4. The Commissioner of Customs, Customs House, Cochin.
5. L.Ramesh, Tax Assistant (on deputation), Customs House, Willington Island, Kochi-9.
6. Sabu Karunakaran, Tax Assistant, O/o the Commissioner of Central Excise, Customs & Service Tax, NGO(A) Colony, Tractor Road, Thirunelveli.
7. Jayadeep C, Inspector of Central Excise, O/o the Commissioner of Central Excise, Customs, and Service Tax, II Division, Elgi Building, Trichy Road, Coimbatore.

- Respondents

(By Advocate Mr George Joseph, ACGSC for R.1 to 4)

(By Advocate Mr OV Radhakrishnan, Senior with Ms Rekha Vasudevan for R. 5 to 7)

O.A.No.835/2009

1. All India Excise Inspectors Association, Kerala Circle, Central Revenue Building, I.S. Press Road, Cochin-18 represented by its Circle Secretary, N.P. Padma Kumar, Inspector of Central Excise, O/o Commissioner of Central Excise, Central Revenue Building, I.S. Press Road, Cochin-18.
2. Roy Joseph, Inspector of Central Excise, O/o the Deputy Commissioner of Central Excise, Service Tax Division, Kathrikadavu, Kaloor, Cochin.
3. Jossy Joseph, Inspector of Central Excise, Audit Section, Central Excise, Customs & Service Tax Commissionerate, Cochin.

- Applicants

(By Advocate Mr Shafik M Abdul Khadir)

1. Union of India represented by its
Secretary,
Department of Revenue,
New Delhi-110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001.
3. The Chief Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
I.S. Press Road, Cochin-682 018.
4. Joseph K John,
House No.XII/254,
'Joyness', Puranattukara P.O.,
Naduvanthupura Road,
Thrissur. Respondents

(By Advocate Mr Millu Dandapani, ACGSC for R.1 to 3)

(By Advocate Mr P.K.Madhusoodhanan for R .4)

O.A.No.400/2010

Joseph K John,
Inspector of Central Excise,
Service Tax Audit Party No.IV,
Internal Audit, Calicut Commissionerate,
Calicut, Kerala. Applicant

(By Advocate Mr P.K.Madhusoodhanan)

v.

1. The Commissioner of Central Excise
(Cadre Controlling),
Cochin Commissionerate,
C.R.Building, I.S.Press Road,
Cochin-18.
2. The Chief Commissioner of Central Excise,
Kerala Zone, C.R.Building,
I.S.Press Road, Cochin-18.
3. The Chief Commissioner of Central Excise,
Mumbai Zone, 115, M.K.Road,
Church Gate, Mumbai-400 020.
4. Union of India represented by
Secretary,
Department of Revenue,
Ministry of Finance, New Delhi. - Respondents

(By Advocate Mr Varghese P Thomas, ACGSC)

This application having been finally heard on 16.3.2011, the Tribunal on 16.5.2011 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The grievance of the applicants in O.A.643/2009, 650/2009 and 835/2009 are against:

i) F.No.A.22015/19/2006-Ad.III.A dated 27.3.2009 regarding relaxation of ban on Inter Commissionerate Transfer (ICT for short) in Groups-B, C and D posts on "spouse ground". According to the said letter, the Central Board of Excise & Customs (CBEC for short) considered and deliberated upon the instructions of the DoPT contained in their O.M.No.28034/7/96-Estt(A) dated 30.4.1986 amended by the O.M. dated 12.6.1997 and O.M dated 23.8.2004 amending to which husband and wife are, as far as possible, and within the constraints of administrative convenience, posted at the same station in its meeting held on 4.3.2009 and decided to relax their earlier instructions regarding ICT partially and to permit ICTs of Groups-B, C and D officers beyond the Commissionerates i.e from one Cadre Controlling Authority to another, without loss of seniority, subject to certain conditions. The said letter is reproduced as under:

"F.No.A.22015/19/2006-Ad.III.A
Government of India's Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

HUDCO, Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi-110 066,
Dated, the 27th March, 2009.

To

All the Chief Commissioners/Directors General under CBEC (by name)

All the Commissioners in-charge of Directorates under CBEC (by name)

Subject: Ban on Inter-Commissionerate Transfers (ICT) in Group B, C and D posts – Relaxation on Spouse Ground.

Sir/Madam,

I am directed to refer to the Board's Circular F.No.A.22015/3/2004-Ad.IIIA dated 19.02.2004, as modified vide the letter dated 09.03.2004, vide which the Inter-Commissionerate Transfers of Groups-B, C and D officers were banned. Although the term used was Inter-Commissionerate Transfers', the ban was actually confined to transfers from one Cadre Controlling Authority to another. There was no ban on transfers amongst the Commissionerates having common cadre, where no loss of seniority was involved, as was clarified vide letter dated 09.03.2004 referred to above.

2. However, it has been pointed out that the instructions of the DOPT (contained in their OM No.28034/7/86-Estt(A) dated 03.04.1986 as amended by OM dated 12.06.1997 and 23.08.2004), provide that "a husband and wife are, as far as possible, and within the constraints of administrative convenience, posted at the same station."

3. The Board deliberated upon the issue in its meeting held on 04.03.2009 and have decided to partially relax the earlier instructions of the Board as referred to above, in order to facilitate posting of husband and wife at the same station in line with the instructions of the DOPT. Accordingly, it has now been decided to permit inter-Commissionerate transfers of Groups-B, C and D officers beyond the Commissionerate having common cadres, i.e. from one Cadre Controlling Authority to another, without any loss of seniority, subject to the following conditions:

a) The transfer/change of cadre shall be permissible only in cases where the spouse is employed with either the Central Government/a State Government.

b) The option for change of cadre must be exercised within six months of the initial appointment of the officer, if the officer is married at the time of such initial appointment. In case of marriage taking place subsequent to the initial appointment, the option must be exercised within six months of the marriage. Further, as far as the past cases are concerned, the option must be exercised within six months of the issue of these instructions.

4. The procedure for change of cadre will be the same as stipulated in the Board's instructions dated 19.02.2004 referred to above, i.e the change of cadre will take place with the approval of the transferor and transferee Cadre Controlling Authorities. There will be no need to seek approval of the Board for this purpose.

5. The above instructions are being issued with the approval

of the Chairman, CBEC and may be brought to the notice of all concerned for compliance.

Yours faithfully,

Sd/-

(K.K.Kattar)

Under Secretary to the Government of India

Copy to:

All the Recognised Staff Associations. Concerned (under CBEC) – for information and circulation among their members."

ii) Letter F.No.A.22015/11/2008-Ad.III.A dated 29.7.2009 lifting the ban on ICT of Groups-B, C and D and relaxation in respect of appointments against "compassionate ground" vacancies quota. By this letter, the CBEC has permitted ICT of Groups-B, C and D officers from the jurisdiction of one Cadre Controlling Authority to another in case of officers appointed against the 5% compassionate vacancies quota, without any loss of seniority. The said letter is reproduced as under:

F.No.A.22015/11/2008-Ad.III.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

HUDCO, Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi-110 066,
Dated, the 29th July, 2009.

To

All the Cadre Controlling authorities (CCAs) under CBEC.

Subject: Ban on Inter-Commissionerate Transfers (ICT) in Group-B, C and D posts – Relaxation in respect of Appointments against Compassionate Quota vacancies.

Sir/Madam,

I am directed to refer to the Board's circular F.No.A.22015/3/2004-Ad.IIIA dated 19.02.2004, as modified vide letter dated 09.03.2004, vide which the Inter-Commissionerate Transfers of Groups-B, C and D officers were banned. The ban was relaxed on spouse ground vide Board's Circular No.22015/19/2006-Ad.IIA dated 27th March, 2009, without any loss of seniority and subject to specific conditions. This was done to facilitate posting of husband and wife at the same station in

line with the instructions issued by the Department of Personnel and Training.

2. The proposal for considering similar relaxation in cases where officers have been appointed against the 5% compassionate vacancies quota, has been under consideration of the Board. The matter was discussed in the Board Meeting held on 22.07.2009. After careful consideration of all relevant factors, the Board was of the view that the ban on ICT has been causing undue hardships to compassionate appointees and was therefore, the ICT ban should be relaxed in such cases.

3. Accordingly, it has now been decided to permit inter-Commissionerate transfers of Groups-B, C and D officers from the jurisdiction of one Cadre Controlling Authority to another, in case of officers appointed against the 5% compassionate vacancies quota, without any loss of seniority. However, all requests for such transfers shall have to be referred to the Board and the decision will be taken at the Board level for permitting the transfers.

Yours faithfully,
Sd/-
(K.K.Khattar)
Under Secretary to Government of India "

iii) Letter F.No.A.22015/18/2009.Ad.III.A dated 7.8.2009 issued to one Shri F.M.Jaswal clarifying that the aforesaid letter dated 27.3.2009 of the CBEC DoPT instructions regarding posting on "spouse ground" did not make any distinction between direct recruitment quota and promotion quota vacancies and therefore, the relaxation in ban on ICT on "spouse ground" shall be applicable to all categories of employees i.e. direct recruitment quota and promotion quota employees. The said letter is reproduced as under:

F.No.A.22015/18/2009-Ad.III.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

HUDCO, Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi-110 066,
Dated, the 7th August, 2009.

Ms F.M.Jaswal,
Commissioner of Central Excise, Delhi-I,

C.R.Building, I.P.Estate,
New Delhi.

Subject: Ban on Inter-Commissionerate Transfers (ICT) in Group B, C and D posts – Relaxation on Spouse Ground – Clarification – reg.

Madam,

I am directed to refer to your letter C.No.II-3(15) Et.I/2009/3978 dated Nil, with reference to Board's Circular F.No.A.22015/19/22006-Ad.III.A dated 27th March, 2009, vide which the ban on ICT was relaxed on spouse ground, without any loss of seniority and subject to specific conditions. This was done to facilitate posting of husband and wife at the same station in line with the instructions issued by the Department of Personnel and Training. You have sought a clarification as to whether such requests can be considered against Promotion Quota vacancies also, as in some cadres like Superintendents; there are only Promotion Quota vacancies.

2. The matter has been examined in the Board. The DOPT instructions regarding postings on spouse ground do not make any distinction between DR quota and Promotion Quota vacancies. So is the case with the Board's instructions issued vide letter dated 27.03.2009. Accordingly, it is hereby clarified that the relaxation in ban on ICT on spouse ground granted vide Board's Instructions dated 27.03.2009 shall be applicable to all categories of employees, i.e. DR quota as well as Promotion Quota employees.

Yours faithfully,
Sd/-

(K.K.Khattar)

Under Secretary to the Government of India

Copy to:

All the Cadre Controlling Authorities (CCAs) under CBEC – for kind information and necessary action."

Brief facts:

O.A.643/2009

2. The applicants are working under the 3rd respondent which is the Cadre Controlling Authority of the Inspectors of Central Excise. They have the zonal seniority determined and maintained separately. The first applicant joined the the 3rd respondent, i.e. the Chief Commissioner of Customs & Central Excise, Kerala Zone, Central Revenue Building, I.S.Press Road, Cochin as Inspector of Central Excise on 1.5.1995 as a direct recruit. The 2nd applicant was promoted to the cadre of Inspector of

Central Excise on 7.5.2008 under the promotional quota. Both of them are aspirants to the higher cadre of Superintendents of Central Excise, to which placements are made on 100% promotion as per the relevant recruitment rules.

O.A.650/2009

3. The 1st applicant in this case is the Association of Ministerial Staff of Customs House, Kochi under the 4th respondent viz, The Commissioner of Customs, Cochin and it is represented by Shri Immanuel Hilton Antony, Secretary who is also an aggrieved party. He joined the service of the Department as Lower Division Clerk on 8.4.1998 and later promoted as Tax Assistant with effect from 25.5.2003. His seniority is 03 in the cadre of Tax Assistants as on 1.1.2009 as per the seniority list issued by the respondents on 11.6.2009. Similarly, the 3rd and 4th applicants also hold the seniority positions of 13 and 15 respectively in the said cadre. The 2nd applicant is presently working as LDC and his seniority position in the said cadre is 09. Their seniority is reckoned only on Commissionerate level. They are also aspirants for promotion to their respective higher posts based on their respective seniority positions.

O.A.835/2009

4. The first applicant in this case is the All India Central Excise Inspectors Association, Kerala Circle, Cochin representing the Inspectors of Central Excise working in Kerala Zone comprising of 4 Commissionerates viz, Central Excise, Customs & Service Tax Commissionerates at Trivandrum, Cochin, Calicut and Customs Preventive Commissionerate Kochi. It is represented by Shri N.P.Padmakumar, Circle Secretary who

joined the respondent-department in Kerala Zone as U.D.C on 3.8.1987 and promoted as Inspector of Central Excise on 13.4.1993. The 2nd and 3rd applicants are also working as Inspectors of Central Excise under the 3rd respondent. The 2nd applicant joined the Department as Inspector of Central Excise on 22.5.1986 in Indore Central Excise Commissionerate and on granting inter-Commissionerate transfer, he joined Kerala Zone on 14.5.1993 with bottom seniority. He is now second in the line of promotion to the next higher post in the Kerala Zone. The 3rd applicant joined as Inspector of Central Excise and he has been working in Kerala Zone since 1.5.1995 and presently working in the Audit Section of the office of the Central Excise, Customs & Service Tax Commissionerate, Cochin. Each cadre controlling authority has separate seniority list for its cadres. The appointment to the cadre of Inspector of Central Excise is done through direct recruitment as well as promotion. However, appointment to the post of Superintendent of Central Excise is through only by promotion.

O.A.400/2010

5. The applicant in this case is working as Inspector of Central Excise (on deputation) under the Commissioner of Central Excise, Calicut. His claim is that in terms of the CBEC's letter F.No.A.22015/19/2006-Ad.III.A dated 27.3.2009 he is eligible to be considered for transfer to the Cochin Central Excise Cadre Controlling Zone on Inter-Commissionerate transfer without loss of seniority on 'spouse ground'. His further submission is that in view of the interim order passed by this Tribunal in O.A.835/2009(supra), the respondents are not in a position to consider his case and the same is causing irreparable injury, injustice, prejudice, loss and hardship to him. He has submitted further that it was the policy of the Government of India to allow the transfer to facilitate the posting of husband and wife to the same

station without any loss of seniority and the CBEC has mooted the policy to achieve social justice in order to enable husband and wife to lead a normal family life and to look after the welfare of their children. He has also submitted that the other Zonal Cadre Controlling Authorities have already effected Inter-Commissionerate transfer without loss of seniority on the strength of the aforesaid letter dated 27.3.2009 and the Bombay Central Excise Commissionerate to which he belongs has itself ordered Inter-Commissionerate transfers by the Annexure A-10 letter dated 10.5.2010, without any loss of seniority. He has specifically mentioned the case of Shri M Chokkalingam, Tax Assistant working in Pune Customs and Central Excise Commissionerate who got the transfer without loss of seniority vide Establishment Order No.96 of 2009 dated 10.7.2009.

6. The applicants in O.A.643/2009, 650/2009 and 853/2009 have challenged the aforesaid impugned orders only to the extent it provides transfer from one seniority zone to another without loss of seniority. The learned counsel for the applicants, Shri Shifik.M.A has drawn a distinction between the transfers on public interest and on personal request. He argued that while there is no question of loss of seniority in the cases of transfers made in public interest, in the cases of transfers made on personal interest, the persons concerned will lose the seniority in the parent cadre on his joining in the new cadre with bottom seniority. As an example, he relied upon Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1988 which provides as under:

- "(1) If a direct recruit officer is transferred from one cadre to another in public interest, his year of allotment shall remain unchanged and his inter-se position among the direct recruits having the same year of allotment in the cadre to which he is transferred shall remain the same as determined in accordance with rule 10 of the Indian Police service (Probation) Rules, 1954.
- (2) If a promotee officer is transferred from one cadre to another in public interest, his year of allotment shall remain

unchanged and he shall be ranked inter-se with promotee officers having the same year of allotment in the cadre to which he is transferred with reference to the date on the basis of which he was assigned the year of allotment under these rules.

(3) If an officer is transferred from one cadre to another at his request, he shall be assigned a position in the gradation list of the cadre to which he is transferred below all the officers of his category borne on that cadre who have the same year of allotment.

Provided that in the case of a direct recruit officer transferred from one cadre to another at his request, his seniority in the list prepared under rule 10 of the Indian Police Service (Probation) Rules, 1954 shall remain unaffected for the purpose of the said list."

Shri Shafik has also submitted that the Post & Telegraph Department, Indian Railways etc. are also following the same principle of "loss of seniority" or "bottom seniority" and referred to Rule 38 of the P& T Manual which reads as under:

"38. Transfer at one's own request.

(1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower."

He has also submitted that Para 3.5 of the DoPT O.M dated 3.7.1986 modified vide para 2(ii) of F.No.A.22013/34/80 Ad.III B dated 20.5.1980 forms the basic orders regarding fixation of seniority on Inter-Commissionerate transfers and it reads as follows:

"The transferee will not be entitled to count the service rendered by him in the former Commissionerate for the purpose of seniority in the new charge. The seniority of persons appointed on transfer basis on their own request, since their transfer is not strictly in public interest, they may be

placed below all officers appointed regularly to that post/grade on the date of their appointment on transfer basis in terms of para 3.5 of Department of Personnel & Training's O.M dated 3.7.1986. In other words, such a transferee will be junior to those regularly appointed prior to his transfer. Therefore, if some promotees have already been appointed on regular basis prior to his appointment on transfer basis he will be junior to those promotees and if as a consequence of rota quota some of those promotees become junior to some DRs then the transferee will become junior to those DRs also notwithstanding their date of joining."

According to him, the notification of the aforesaid modification was to strictly regulate the seniority of officers coming to a new Commissionerate on Inter-Commissionerate transfers, in terms of para 3.5 of DoPT OM dated 3.7.1986 and it is not the case for anybody in these OAs that in any of the impugned orders, Para 3.5 of DoPT has undergone any change in the meanwhile. None of the impugned orders have also not made any reference to the said Para. According to him, the respondents cannot bring back Inter-Commissionerate transfers disguising as a relaxation to the ban on Inter-Commissionerate transfers overlooking the aforesaid Para of the DoPT's OM dated 3.7.1986.

7. Shri Shafik has further submitted that transfer and posting of the spouses in the same station cannot be considered as made in public interest. According to him, the concept of public interest transfer is in the larger interest of the public and in many cases to the detriment of the person concerned and in such cases even though one is not interested in such transfers, because of his conditions of service like All India transfer liability etc., he has no other choice. Therefore, protecting the seniority, pay, rank etc. in such cases is inevitable. Transfer on request where on spouse ground or on compassionate ground is acceded to only as a measure of facilitation or an act of compassion keeping in view of the administrative exigencies and feasibility and it is not a matter of right and

public at large does not have a stake in it. He further submitted that in order to determine whether a transfer is public interest or not, the test would be "whether the public at large would be prejudiced if the official is not transferred".

8. In this regard, he has relied upon the judgments of the Apex Court in the following cases:

- i) **Dwijen Chandra Sarkar and another v. Union of India & others**
[(1999) 2 SCC 119];
- ii) **Joyachan M Sebastian v. Director General & others** [(1996) 10 SCC 291].
- iii) **Bank of India v Jagjit Singh Mehta** [(1992) 1 SCC 306];
- iv) **Director, Lift Irrigation Corporation Ltd and others v. Pravat Kiran Mohanty and others** [(1991) 2 SCC 295]
- v) **Karam Sarup Kanwar v. Union of India and others** [AIR 1985 SC 774].

9. In the case of **Dwijen Chandra Sarkar (supra)** the Apex Court has held as under:

"14. The words "except seniority" in the 1983 circular, in our view means that such a benefit of a higher grade given to the transferees will in no way effect the seniority of employees in the P & T Department when the turn of the P & T employees comes up for promotion to a higher category or post. The said words 'except seniority' are intended to see that the said persons who have come from another department on transfer do not upset the seniority in the transferee department. Granting them higher grade under the scheme for time-bound promotion does not therefore offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P & T Department."

10. In the case of **Joyachyan M Sebastian (supra)** the Apex Court has held as under:

"7. It is now settled legal position that on abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as surplus, the Government have accommodated him in the available vacancy and, therefore, it must be deemed to be a fresh appointment for the purposes of seniority. After joining in Salem in Tamil Nadu, he made a request for transfer to Trivandrum and it is at his request that he was transferred. Consequently, on his undertaking in the application that he would not claim his seniority at Salem Station, the transfer was effected at his request. It is settled legal position that he would take his seniority as junior-most among the confirmed employees in the transferee-region."

11. In the case of **Bank of India's case** the Apex Court has held as under:

"5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officers' grade and thereafter he seeks to be relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require

the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

12. In **Director, Lift Irrigation Corporation's case (supra)** the Hon'ble Supreme Court held as under:

"4. The writ petitioner holds only Diploma in Electrical Engineering. S/Shri Bidura Charan Mohapatra and Parijat Ray hold double diploma of Mechanical and Electrical Engineering. It is settled law that the Government or the Corporation, due to administrative exigencies, is entitled to and has power to reorganise the existing cadres of amalgamate some or carve out separate cadres. The pre-existing three separate cadres, namely, Electrical, Mechanical and the composite cadre, namely, Electrical-Mechanical were sought to be amalgamated into two cadres by absorbing the personnel working in the composite cadre, namely, Electrical-Mechanical in either Electrical cadre or Mechanical cadre. Options have been called for in that regard from all the persons working in the Electrical-Mechanical cadre and the appellants exercised their options for absorption in Electrical cadre. The employees working in the Electrical and Mechanical cadres were also aware of the same. It was, therefore, open to the respondent to raise any objection to the policy at that stage. But he failed to do so. The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. On account of the amalgamation and adjusting the composite Electrical-Mechanical cadre in either of the Electrical or Mechanical cadre as per the options given, the order of seniority of the employees working in Electrical or Mechanical cadres is likely to be reviewed. When the persons in the composite Electrical-Mechanical cadre opted to the Electrical cadre, they are entitled to be considered for their fitment to the cadre as per the seniority from the date of their initial appointment vis-a-vis their scale of pay. This was the procedure adopted by the Corporation in fixing the inter se seniority. The procedure adopted is just, fair and reasonable and beneficial to all the employees without effecting their scales of pay or loosing the seniority from the date of initial appointment. Undoubtedly, in this process

the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the Corporation is in violation of the right of the respondent/ writ petitioner to equality enshrined under Art. 14 read with Art. 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified."

13. In Karam Sarup Kanwar's case cited (supra) the Hon'ble Supreme Court has held as under:

In course of the hearing counsel for the petitioners referred to instances where a direct recruit coming into the cadre several years after others coming into the cadre from the Select List had been assigned seniority over such promotees. This was explained by counsel for the respondents to have been the outcome of giving effect to clause 3 of Regulation 3 as it stood prior to December, 1977 without the proviso. The instances relied upon were found to be events prior to the introduction of the proviso. In the absence of challenge to the Rules and the Regulations, resultant situations flowing from compliance of the same are not open to attack. Occasion for similar grievance would not arise in future as the proviso in the relevant regulation and clauses (4) and (5) of the Regulation 3 will now meet the situation."

14. Shri Sunil Jacob Jose, SCGSC, Shri George Joseph, ACGSC, Shri Millu Dandapani, ACGSC and Shri Varghese P Thomas, ACGSC on behalf of the official respondents in O.A.643/2009, 650/2009, 835/2009 and 400/2010 respectively.

15. Shri U Balagangadharan appeared on behalf of respondent-4 in O.A.643/2009, Shri O.V.Radhakrishnan, Senior counsel along with Mrs Radhakani Amma appeared for respondents 5 & 6 in O.A.643/2009 and for respondents 5 to 7 in O.A.650/2009. Shri P.K.Madusoodanan appeared on

behalf of the applicant in O.A.400/2010 and for the respondent-4 in O.A.835/2009.

16. The arguments on behalf of the private respondents 5 and 6 in O.A.643/2009 and applicant in O.A.400/2010 have been led by Senior Counsel Shri O.V.Radhakrishnan. According to him, the impugned orders are not in violation or in conflict with any of the provisions of the recruitment rules, particularly, the Central Excise & Customs Department, Tax Assistants (Group C posts) Recruitment Rules, 2003. As the Rule 3(1) thereof, provides that each Commissionerate shall have its own separate cadre, unless otherwise directed by the CBEC.e, the CBEC is competent to give directions which may be otherwise than what is provided in the recruitment rules. He has also pointed out that Rule 3(2) provides that notwithstanding anything contained in sub rule (1), the Chief Commissioner of Central Excise or Chief Commissioner of Customs having jurisdiction over the concerned Commissionerate may, if he considers it to be necessary or expedient in public interest so to do and subject to such conditions as he may specify having regarding to the circumstances of the case and for the reasons to be recorded in writing, order any post in the Commissionerate or Directorate as the case may be, to be filled by absorption of persons holding the same or comparable posts but belong to the cadre of another Commissionerate or Directorate or any other office under CBEC, as the case may be. The said provision makes it clear that the Chief Commissioner is competent if he considers it necessary or expedient in the public interest to do so, to order any post in the Commissionerate to be filled by absorption of persons holding the same or comparable posts but belonging to th cadre of another Commissionerate or Directorate. In exercise of the above power if a post in the

Commissionerate is filled by absorption of persons holding the same or comparable but belonging to the cadre of another Commissionerate in public interest, it would not entail loss of seniority. In other words, no executive instruction issued in tune with rule 3(2) of the recruitment rules cannot be said to be violative of the recruitment rules and therefore, the impugned orders do not conflict with or violate any of the provisions of the recruitment rules. He has cited the following reasons for his aforesaid arguments:

- i) Such filling up of posts is done by the Chief Commissioner in exercise of his power under Rule 3(2) and not on request by any of the employees;
- ii) The filling up of posts invoking Rule 3(2), is in larger public and social interest;
- iii) The filling up of posts are by persons holding the same or comparable posts but belonging to the cadre of another Commissionerate;
- iv) No loss of seniority would involve in such filling up of posts invoking Rule 3(2) for the reason that it is not on request of the employee concerned, but is in public interest;
- v) Rule 3(2) of the Recruitment Rules, thus, enables filling up of posts by absorption of persons holding the same or comparable posts, but belonging to the cadre of another Commissionerate.

17. Shri O.V.Radhakrishnan further contented is that the impugned Annexures A-1 to A-3 are valid as they are not in violation of the existing Recruitment Rules. Therefore, they are not liable to be challenged on the ground that previous Orders/Rule did not permit Inter-Commissionerate transfers on spouse-ground with seniority. The

seniority-rule can be modified, amended or superseded by new Rules, and the new Rules cannot be attacked on the ground that they violate the old Rule which stood superseded. In this regard, he has referred to Annexure R-5(n) O.M. dated 3.7.1986 the seniority rule and specifically to Rule 3 deals with seniority of transferees. Rule 3.5 provides that in case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption. The necessary corollary is that in case in which transfers are made in public interest, such transfers shall not entail loss of seniority. Shri Radhakrishnan submitted that the impugned orders are issued in public interest and therefore, they do not violate any seniority rule. In other words, he has argued that transfer on spouse ground/compassionate ground are made in public interest and therefore, they do not violate the seniority rule. As regards the transfer ordered on spouse ground is concerned, Shri Radhakrishnan submitted that the Office Memorandum dated 12.06.1997 states that the Government have issued detailed guidelines in O.M. 28034/7/86- Estt(A) dated 03-04-1986 on the posting of husband and wife at the same station. The Fifth Central Pay Commission recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provisions that where posts at the appropriate level exist in the organisation at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

In Annexure A-8 O.M. the Government of India have reiterated that all ministries/departments should strictly adhere to the guidelines laid down in O.M dated 03-04-1986 while deciding on the request for posting husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age. In Annexure A-10 it has been stated that it is the policy of the government that as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children. It is therefore, submitted the aforesaid order dated 27-03-2009 has been issued in terms of the Executive direction contained in O.M. dated 03-04-1986 and O.Ms dated 12-06-1997 and 23-08-2007, that 'a husband and wife are, as far as possible, and within the constraints of administrative, convenience, posted at the same station. Accordingly, it has been decided to permit Inter-Commissionerate transfers of Groups B, C, and D Officers beyond the Commissionerates having common cadres i.e. from one cadre controlling authority to another, without any loss of seniority subject to the conditions provided thereunder are absolutely justifiable. He has also submitted that the clarification contained in the letter dated 07-08-2009 that the DOPT instructions regarding postings on spouse-ground do not make any distinction between DR-quota and promotion quota vacancies, and that the relaxation of ban on ICT on spouse-ground granted shall be applicable to all categories of employees i.e. direct-recruitment quota

as well as promotion-quota employees is also justifiable.

18. Shri Radhakrishnan further submitted that the transfers on spouse-ground are not ordered in individual cases, but considering the larger public and social interest. It subserves a public purpose and promotes public interest for better administration and efficiency of service. It is intended to remove frustration of employed husband and wife living separately. It is intended to facilitate the upbringing of children by the parents, and in the absence of proper upbringing of children by both the parents, the children may become problematic not only to the parents but also to the society. It would bring in contentment among the spouse living separately, and it would provide a healthy atmosphere to discharge duties and responsibilities more efficiently and satisfactorily. Therefore, the policy of the government to allow transfers on spouse-ground has a social goal and it is part of the obligation of the state to provide social justice.

19. He has also referred to the Government of India Notification No.19-10/2004-GDS, Ministry of Communications and IT, Department of Posts, dated 17-07-2006 wherein the Government has laid down a uniform criteria as to what constitutes 'public interest' and decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rule 3 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001. One of the grounds is 'woman-GDS on her marriage/re-marriage', and that is brought within

the expression 'public interest'. He has also submitted that the expression 'public interest' has to be seen in contradistinction to 'private interest'. For example, a spinster is seeking transfer to her home-station to attend to her old and ailing parents, is in private interest as it does not involve larger public or social interest.

20. Shri Radhakrishnan has relied upon the judgment of the Apex court in **Gian Singh Mann v. High Court of Punjab & Haryana and another** [(1980) 4 SCC 266], wherein the ambit of the expression 'public interest' in the context of compulsory retirement for weeding out the unfit employees has been considered. It has been held therein as under:

"In our opinion, the expression in the context of premature retirement has a well settled meaning. It refers the cases where the interests of public administration require the retirement of public servant, who with the passage of years has prematurely ceased to possess the stamp of efficiency, competence, and utility, called for by the government service to which he belongs".

According to Shri Radhakrishnan, the ratio of the decision in the above case is that whatever is done to achieve the standard of efficiency, competence, and utility called for by government service is in public interest. Similarly, the posting of husband and wife at the same station is intended to enhance the standard of efficiency, competence, and utility called for by the government service.

21. He has further relied upon the decision of the Apex Court in **Union of India v. M.E. Reddy** (1980) 2 SCC 15, in the context of

compulsory retirement wherein it has been held that to give chance to those who possess a better initiative and high standard of efficiency might show marked improvement and compulsory retirement of those who are dead-wood is undoubtedly in public interest. He has also relied upon the judgment of the Apex Court in **K.Ashok Reddy v. The Government of India and others** [(1994) 2 SCC 303], wherein it has been held that the power of transfer of High Court judge under Article 222 of the Constitution, is to subserve a public purpose and to promote 'public interest' for better administration of justice throughout the country. The expression 'public interest' has a legal connotation well known and properly understood and so also the requirement of promoting better administration of justice throughout the country, which is the guideline held to be implicit in Article 222 of the Constitution. In paragraph 15 of the same judgment, it has been held as under:

"In our opinion, the guideline of 'public interest' i.e. for promoting better administration of justice throughout the country is sufficient guideline for proper exercise of the power and to ensure exclusion of the possibility of any arbitrariness in the exercise of power of transfer under Article 222".

22. Shri Radhakrishnan has further submitted that the grievance of the applicant that their seniority in their Commissionerate will be adversely affected, if persons are allowed Inter-Commissionerate transfer without loss of seniority on spouse-ground, is unfounded and entirely untenable for the following reasons:-

(1) Annexure R-5(n) seniority-rule provides that

transfers made not in public interest alone will entail loss of seniority (paragraph 3.5). Annexures A-1 to A-3 permit Inter-Commissionerate transfers on Spouse-ground which is in public interest. Therefore, applicants cannot be taken to be aggrieved by Annexures A-1 to A-3.

(2) Seniority is not an accrued or vested right as held by the Apex Court in **Ashok Kumar Gupta v. State of U.P** [(1997) 5 SCC 201] as under:

"21. Seniority is a facet of interest. When the Rules prescribe the method of selection/recruitment, seniority is governed by the ranking given and governed by such Rules as was held by a Bench of three judges in **A.K Bhatnagar v. Union of India**. In Indian Administrative Service Association, U.P. v. Union of India, another Bench of three judges had held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules. In **Akhil Bharatiya Soshit Karamchari Sangh v. Union of India** a Bench to which two of us, K. Ramaswamy and G.B. Patnaik J.J., were members, following the above ratio, held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules".

(3) The Government can alter the terms and conditions of the employees unilaterally as held by the Hon'ble Supreme Court in **State of Jammu and Kashmir v. T.N. Khosa**, [AIR 1974 SC 1], which is as under:-

"22. If Rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his

rights and obligations are liable to be determined under statutory or Constitutional authority which for its exercise requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding".

(3) Chances of promotion are not condition of service as held by the Apex Court in **K. Jagadeesan v. Union of India** which is as under:-

"a right to be considered for promotion is a term of service; but mere chances of promotion are not; so also the eligibility for promotion..... Chances of promotion are not conditions of service which are defeasible in accordance with the Rules. Thus it is a settled principle in the service jurisprudence that mere chances of promotion are not conditions of service and a candidate appointed in accordance with the rules can steal a march over his erstwhile seniors in the feeder/lower cadre".

(5) No one has a vested right to get promotion as held by the Apex Court in **Ashok Kumar Gupta v. State of U.P** [(1997) 5 SCC 201], which is as under:

"No one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules. It could be taken away only by operation of valid law".

23. We have heard the learned counsel for the parties and perused the departmental records made available by the official respondents. The Apex Court has considered the question of seniority and transfer in a number of cases. Apart from the judgments cited by the counsel for the parties, some of the other judgments and the relevant decisions

of the Apex Court in this regard are the following:

(i) Maharashtra State Electricity Board and another v. Rama Rajaramji Wadekar and another [2003 SCC (L&S) 158]: para 4

"4. Mr Bhasme, the learned counsel appearing for the Board contended that the conclusion of the High Court is based upon a thorough misreading of the relevant provisions of the Regulations and, on the face of it, is unsustainable in law and the same must be set aside. The respondents though had entered appearance, but the Advocate on Record submitted that he has no instructions in the matter and, therefore, none argued on their behalf. Since the respondents were not being represented by any counsel, we have meticulously examined the relevant documents available on record and the provisions of the Regulations framed under Section 79(c) of the Electricity Supply Act, 1948. Regulation 2(b) defined "cadre" and Regulation 2(d) says "ex-cadre post" means "post outside the cadre". Regulation 2(e) stipulates that "ex-cadre transfer" of an employee from one cadre to another or in respect of an employee not being a member of a cadre, his transfer from one post to another". Regulation 3 indicates that seniority shall be based on the length of continuous service in the particular category. Regulation 17 indicates that the cadre of Sub Engineers was Circlewise and the note appended thereto unequivocally states that the category of Sub Engineers has been deleted from the Circlewise seniority and included in the Statewise seniority w.e.f. 21.10.1980 by order dated 31.3.1983. It is thus crystal clear that prior to 1980 the seniority of Sub Engineers was being determined on the basis of the Circle in which they had been absorbed and, therefore, each Circle would constitute a cadre so far as Sub Engineers are concerned. Regulation 21(a) is, in fact, relevant for our purpose and the same may be extracted in extenso herein:

"21. (a) In the case of an ex-cadre transfer effected at the request of an employee, the service in the original unit of seniority from which he is transferred shall not count as service as for the purpose of seniority but the date of his reporting for duty in the new post shall be taken as the basis of his seniority."

(ii) K.P.Sudhakaran and another v. State of Kerala and others

[(2006) 5 SCC 386]:

8. In the meanwhile, the order of the learned Single Judge was challenged by the transferred LDCs in W.A. No.1178/1997 and connected appeals. The State resisted the appeals by relying on the G.O. dated 2.1.1961 and Rule 27 of Kerala State and Subordinate Service Rules, 1958 ('Rules' for short) to contend that transferred LDCs. had to be treated as junior-most in the new district and the list dated

22.9.1967 was finalized by applying the said rule. The Division Bench which heard the appeals, held that having regard to GO dated 2.1.1961 and Rule 27, the seniority of the transferred LDCs will have to be reckoned only from the date of their joining at the District to which they were transferred on their own request. It however felt that the seniority list finalized in 1984 and the position of the transferred LDCs should not be disturbed. It held that G.O. dated 2.1.1961 and the proviso to Rule 27(a) should be given effect prospectively. It, therefore, allowed the appeals filed by the transferred LDCs by order dated 14.8.2002 with the following observations :

"This is a case where inter-district transfers were effected before 1984 and they were all included in the final seniority list of L.D. Clerks giving seniority from the date of which they joined duty in the parent district. We are of the view at this distance of time there is no justification in disturbing the said situation. In such circumstances we hold that the direction given by first and second respondents to revise the final seniority list published vide office General Memorandum No. E4-34154/84 dated 7.11.1984 is illegal. Promotions on the basis of the said list be not disturbed and G.O. (Ms) 4/61/PD dated 2.1.1961 and the proviso to General Rule 27 of the Kerala State and Subordinate Services Rules would apply only prospectively without unsettling the rank and position of the petitioners. It is so declared and Ext. P7 order (order/seniority list dated 13.11.1990), would stand quashed. Rights of the parties will be regulated accordingly. Judgment of the learned single judge will stand set aside. All the writ appeals and original petitions are disposed of as above."

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11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the

cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules.

12. We may next refer to the relevant rules and GOs having a bearing on the subject. The service of State Government servants in State of Kerala are governed by the Kerala Public Services Act, 1968. Section 3 provides that all Rules made under the proviso to Article 309 regulating the recruitment and conditions of service of persons appointed to Government service and in force immediately before 17.9.1968, shall be deemed to have been made under the said Act and shall continue to be in force unless and until they are superseded by Rules made under the Act. The Kerala State and Subordinate Services Rules, 1958 ('Rules' for short) were made in exercise of power conferred under proviso to Article 309. The said statutory Rules governed seniority and transfer of Government servants. The said Rules as they originally stood, did not provide for 'own request transfers' and consequences thereof.

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14. The transferred LDCs. (contesting private respondents) contended that the GO dated 27.5.1971 stated that it will not affect the existing procedure where State-wise promotions are involved. They point out that though the posts of LDCs. are District-wise, as the promotion of LDCs to UDCs is State-wise, the provisions of G.O. dated 2.1.1961 will not apply, in view of clause (iv) of G.O. dated 27.5.1971. It is unnecessary to examine whether clause (iv) of G.O. dated 27.5.1971 excludes the applicability of G.O. dated 2.1.1961, as neither the G.O. dated 27.5.1971 nor the G.O. dated 2.1.1961 governed the effect of 'own request' transfers, after Rule 27(a) of the Service Rules was amended by introducing a proviso providing for the consequences of 'own request' transfers. Where Statutory Rules govern the field, prior executive instructions cease to apply."

(iii) **State of Maharashtra and others v. Uttam Vishnu Pawar**

[(2008) 2 SCC 646]

"10. In this connection our attention was invited to the case of Dwijen Chandra Sarkar and Another Vs. Union of India And Others (1999) 2 SCC 119. In that case the incumbent was transferred from Rehabilitation Department to P & T Department in public interest at zero level seniority in the P & T Department but his past services were counted for giving him the benefit of the Scheme on completion of 16 years of service. In the said case the Court relied on an earlier decision of this Court in the case of Renu Mullick Vs. Union of India (1994) 1 SCC 373 wherein in identical situation the transferee was not permitted to count her

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service rendered in former Collectorate for the purpose of seniority in the new charge but she was permitted to count the service rendered by her in earlier Collectorate for other purposes except seniority."

(iv) **Union of India and others v. Deo Narain and others [(2008) 10**

SCC 84], the Apex Court held as follows:

"32. What was held in **Union of India v. C.N. Ponnappan [(1996) 1 SCC 524]** by this Court was that if an employee is transferred from one Department to another Department on compassionate ground, he would be placed at the bottom of the seniority in the transferee Department. Hence, at the time of his transfer in the transferee Department, all employees in the same cadre who were very much serving at that time would be shown above such transferee employee and in such combined seniority list, the transferred employee would be shown as junior most. The only thing which this Court said and with respect, rightly is that such employee who had already worked in a particular cadre and gained experience, will not lose past service and experience for the purpose of considering eligibility when his case comes up for consideration for further promotion.

33. In our judgment, the ratio laid down by this Court in **Ponnappan** clearly lays down the principle formulated in the Government of India's letter dated May 20, 1980 as also in a subsequent communication, dated May 23, 1997 issued by the Ministry of Finance, Department of Revenue. Even otherwise, in our considered opinion, the two concepts, viz. (i) 'eligibility' and (ii) 'seniority' are quite distinct, different and independent of each other. A person may be eligible, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite 'seniority' for entry in the zone of consideration. Even if he fulfils the first requirement, but does not come within the zone of consideration in the light of his position and placement in 'seniority' and the second conditions is not fulfilled, he cannot claim consideration merely on the basis of his eligibility or qualification. It is only at the time when 'seniority' cases of other employees similarly placed are considered that his case must also be considered. The CAT, in our view, therefore, was not right in applying **Ponnappan** and in granting relief to the applicants. There is no doubt in our mind that it says to the contrary.

34. Our attention was also invited to **Renu Mullick (Smt) v. Union of India & Anr., (1994) 1 SCC 373**. In **Renu Mullick**, the appellant was appointed as LDC in Central Excise and Customs, New Delhi on December 17, 1974. She was promoted as UDC on May 10,

1985. Then, on her own request, she was transferred to the Central Excise Collectorate, Allahabad where she joined on August 4, 1987. She gave an undertaking that on unilateral transfer, her seniority may be "fixed below the last temporary UDC in the Allahabad Collectorate" i.e. she might be "treated as a fresh entrant in the cadre of UDC", at Allahabad. In 1991, she was initially promoted as Inspector but later on reverted on the ground that she did not fulfill the eligibility conditions laid down in Rule 4 for the recruitment which required experience of a particular period. According to the Department, since she was considered as fresh entrant, she had not completed the requisite service and having necessary experience and was, therefore, not eligible for promotion to the post of Inspector. This Court held that the Department was not right. According to the Court, even if the employee sought unilateral transfer by agreeing to be placed at the bottom of seniority list in the transferee Department, it would not wipe out the services rendered by such employee. In other words, according to this Court, an employee who is otherwise eligible, would not become ineligible, merely on the ground of voluntary or unilateral transfer. The Court stated (Renu Mullick's case):

"10. We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2 (ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in two years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be, determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

11. The provisions of the rules reproduced above lay down that a UDC with five years service or UDC with thirteen years of total service as UDC and LDC taken together subject to the condition that he should have put in a minimum of two years of service in the grade of UDC, is eligible to be considered for promotion to the post of Inspector. The rule nowhere lays down that less than five years or thirteen years have to be spent in one collectorate. There is no indication, whatsoever, in the rule that the service period of five years and thirteen years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the rule the appellant, having served the department for more than five years as UDC and also having completed thirteen years composite service as UDC and LDC including two years minimum service as UDC, was eligible to be considered for promotion to the post of Inspector. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the appellant".

35. In our opinion, Renu Mullick also supports the view which we are inclined to take, namely, that an employee who is transferred to other Collectorate does not lose his/her past service for the purpose of considering his/her eligibility. But, if such transfer is voluntary or unilateral on condition that he/she will be placed at the bottom of the seniority list in the transferee Department, the said condition would bind him/her and he/she cannot claim seniority over the employees in the transferee Department."

(v) Jagdish Lal and others v. State of Haryana and others [(1997)

6 SCC 538] the Apex Court held as under:

"12. The question then is : whether such a rule becomes arbitrary or violative of equality enshrined under Article 14 read with Article 16 (1) of the Constitution, when applied to Dalits and Tribes? It would be appropriate at this stage to have the benefit of case law on the subject. In the **All India Administrative Service (SAS) Association & Ors. V/s. Union of India [(1993) Supp 1 SCC 730]**, in paras 14 and 15, a Bench of three Judges, to which one of us, K. Ramaswamy, J., was a member, has held that no one has vested right to promotion or seniority but an officer has an interest in seniority acquired by working out the rules. In **T.R. Kapoor V/s. State of Haryana [(1986) Supp. SCC 584 at 595]**, this Court observed that "unless it is specifically provided in the rules, the employees who are already promoted before the Amendment of the Rules, cannot be reverted and their promotions cannot be recalled".

In **State of Maharashtra V/s. Chandrakant Anant Kulkarni** [(1981) 4 SCC 130], another Bench of three Judges in paragraph 16 at page 141 had held that "(M)ere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service." In **K. Jagadeesan vs. Union of India & Ors.** [(1990) 2 SCC 228 at 230], in para 6, it was held that "a right to be considered for promotion is a term of service, but mere chances of promotion are not"; so also the eligibility for promotion. Passing of the departmental examination is nothing but a mere chance of promotion. In **Ashok Kumar Gupta v. State of U.P.** [1997 (3) SCALE 289 at 299, para 22] this Court comprising all the three of us, had held that "in service jurisprudence, a distinction between a right and interest has always been maintained. Seniority is a facet of interest. When the Rules prescribed the method of selection/recruitment, seniority is given as per the ranking given and governed by such as was laid in the rules". Similar view taken in **A.K. Bhatnagar v. Union of India** [(1991) 1 SCC 544] was upheld by this Court. In **Akhil Bhartiya Soshit Karmchari Sangh v. Union of India** [(1996) 6 SCC 65] to which two of us, K. Ramaswamy and G.B. Pattanaik, were members, this Court has held that no member of the service has a vested right to promotion or seniority but an officer has an interest in seniority acquired by working out the rules. In **Md. Shujat Ali & Ors. etc. v. Union of India & Ors. etc.** [(1975) 1 SCR 449] a Constitution Bench had held that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing conditions of service. In **Mohd. Bhakar vs. Krishna Reddy** [1970 SLR 268], a Bench of three Judges had held that any rule which affects the promotion of a person, relates to conditions of service. In **State of Mysore v. G.B.** [1967 S.L.R. 753] a Bench of two Judges had held that rule which merely affects chances of promotion cannot be regarded as varying the condition of service. Chances of promotion are not conditions of service. In **Syed Khalid Rizvi & Ors. v. Union of India & Ors.** [1993 supp. (3) SCC 575] to which one of us K.R.S., J. was a members, it was held in para 31 that no employer has a right to promotion; the only right is that he is entitled to be considered for promotion according to rules. Chances of promotion are not conditions of service which defeasible in accordance with the rules. Thus, it is settled principle in the service jurisprudence that mere chances of promotion are not conditions of service and a candidate appointed in accordance with the rule and steal a march over his erstwhile seniors in the feeder/lower cadre. On his having satisfactorily completed probation and declaration thereof, he is given seniority in the higher cadre. He become a member of the higher cadre from the date of starting discharging duty of the post to which he is promoted unless otherwise determined in accordance with the rules. From that date, he ceases to be a Member of the feeder cadre/grade from which he was promoted.

The hierachal promotions to various cadres mentioned hereinabove operate in the same manner and thereby on successive promotion to various cadres/grades, though in the same service, one would steal a march over other, by the general or reserved candidates."

(vi) **T.Narasimhulu and others v. State of Andhra Praesh and other** [(2010) 6 SCC 545], the Apex Court held as under:

"23. In a three-Judge Bench judgment in **S. S. Bola & Ors. v. B.D. Sardana & Ors.** [(1997) 6 SCC 623], cited by Mr. Patwalia, however, we find that this Court has clearly held that seniority was not a vested or accrued right. Three separate judgments were delivered by K. Ramaswamy, J., S. Saghir Ahmad, J. and G. B. Pattanaik, J. K. Ramaswamy, J. has held:

"153. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law."

G. B. Pattanaik, J. has also held:

"200. Thus, to have a particular position in the seniority list within a cadre can neither be said to be an accrued or vested right of a Government servant and losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion get delayed thereby."

Saghir Ahmad, J. has agreed with G. B. Pattanaik, J. and has held:

"162. In the instant case, the judgments rendered by this Court in the earlier decisions relating to the seniority of the present incumbents were founded on the service rules then existing. These service rules have since been replaced by the impugned Act which has been enforced with retrospective effect. The various aspects of merits have been considered by my Brother Pattanaik and I cannot usefully add any further words on merits."

24. It is, thus, clear from the judgment of a larger Bench that in **S. S. Bola & Ors. v. B. D. Sardana & Ors.** (supra) that seniority of a Government servant is not a vested right and that an Act of the State Legislature or a rule made under Article 309 of the Constitution can retrospectively affect the seniority of a Government servant. The second contention of Mr. Rao, therefore, also fails."

(vii) Ashok Kumar Gupta and another v. State of U.P and others

[(1997) 5 SCC 201] the Apex Court held as under:

"22. In service jurisprudence, a distinction between right and interest has always been maintained. Seniority is a facet of interest. When the Rules prescribe the methods of selection/recruitment, seniority is governed by the ranging given and governed by such rules as was held by a bench of three judges in **A.K. Bhatnagar & Ors. v. Union of India & Ors** [(1993) supp. 1 SCC 730 in paras 14 & 15] another Bench of three judges had held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the rules. In **A.B.S.K. Sangh v. Union of India & Ors.** [JT (1996) SC 274], a Bench to which two of us, K. Ramaswamy & G.P. Pattanaik, JJ., were members, following the above ratio, held that no one has a "vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the rules". It could be taken away only by operation of valid law. In **M.D. Shujat Ali & Ors. v. Union of India & Ors.** [(1975) 1 SCR 449] a Constitution Bench had held that Rule 18 of the Andhra Pradesh Engineering Service Rules which confers a right of actual promotion or a right to be considered by promotion is a rule prescribing conditions of service. In **Md. Bhakar v. Krishna Reddy** [1970 SLR 768], another Bench of three Judges had held that any rule which affects that promotion of a person relates to conditions of service. In **State of Mysore v. G.B. Purohit** [1967 SLR 753] a Bench of two judges had held that the rule which merely affects chances of promotion cannot be regarded as varying condition of service. Chances of promotion are not condition of service. In **Ramchandra Shankar Deodhar v. State of Maharashtra** [(1974) 1 SCC 317], a Constitution Bench had held that a rule which merely affects the changes of promotion does not amount to change in the conditions of service. In **Syed Khalid Rizvi & Ors. v. Union of India & Ors** [(1993) supp. 3 SCC 575] a Bench of three judges following the above ratio, with approval, had held at page 602 para 31, that no employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible in accordance with the law."

(viii) Ashok Gulati and others v. B.S.Jain [AIR 1987 SC 424], The

Hon'ble Apex Court held as under:

"22. According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service.

The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularization of service (d) on the basis of length of service, or (e) on any other reasonable basis."

(ix) **Keshav Chandra Joshi and others v. Union of India and others** [1992 Supp(1) SCC 272], the Hon'ble Apex Court has held as under:

"..... There is a distinction between "rules of recruitment" and "conditions of service". To become a member of the service in a substantive capacity, appointment by the Governor shall be preceded by selection of a direct recruit by the Public Service Commission; undergoing training in Forestry for two years in the college and passing Diploma are conditions precedent."

(x) **Punjab Water supply & Sewerage Board v. Ranjodh Singh and others** [(2007) 1 SCC (L&S) 713], the Hon'ble Supreme Court has held as under:

"19. In the instant case, the High Court did not issue a writ of mandamus on arriving at a finding that the respondents had a legal right in relation to their claim for regularisation, which it was obligated to do. It proceeded to issue the directions only on the basis of the purported policy decision adopted by the State. It failed to notice that a policy decision cannot be adopted by means of a circular letter and, as noticed hereinbefore, even a policy decision adopted in terms of Article 162 of the Constitution of India in that behalf would be void. Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions. Any appointment, thus, made without following the procedure would be ultra vires."

(xi) **Bimlesh Tanwar v. State of Haryanana and others** [(2003) 5 SCC 604], the Apex Court has held as under:

"44. A question which arose therein for consideration was inter se seniority between direct recruits and promotees as there existed quota rules and furthermore appointments were also made on ad hoc basis. It is in that situation, this Court inter alia observed:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only on ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

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46. Union of India v S.S.Uppal [(1996) 2 SCC 168], it has been held: the provisions of Articles 16(1), 16(4) and 335 of the Constitution of India imply that a process should be adopted while making appointment through direct recruitment or promotion in which the merit is not affected."

(xii) K.P.Sdhakaran and another v. State of Kerala and others

[2006 AIR SCW 2700], the Apex Court has held as under:

"10. On the contentions urged, the following two points arise for consideration :

(i) Whether the seniority of transferred LDCs (transferred on own request to another unit (district) in the same department) should be reckoned from the date of their initial appointment to the post, or from the date on which they were transferred to the new district. Whether the lower post (LDC) being a district-wise post and the promotion post (UDC) being a state-wise post, would make any difference to the position.

(ii) Whether the Division Bench was justified in holding that the GO dated 2.1.1961 and proviso to Rule 27(a) of the Rules should only be applied prospectively in the case of the transferred LDCs. (that is from the date of the judgment of the Division Bench), thereby giving benefit of the past service (from the date of initial appointment up to date of transfer), to transferred LDCs, contrary to the said rules and GO and denying to the local clerks the benefit of a higher position in the seniority list.

Re: Point No. 1 :

11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by



claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules.

12. We may next refer to the relevant rules and GOs having a bearing on the subject. The service of State Government servants in State of Kerala are governed by the Kerala Public Services Act, 1968. Section 3 provides that all Rules made under the proviso to Article 309 regulating the recruitment and conditions of service of persons appointed to Government service and in force immediately before 17.9.1968, shall be deemed to have been made under the said Act and shall continue to be in force unless and until they are superseded by Rules made under the Act. The Kerala State and Subordinate Services Rules, 1958 ('Rules' for short) were made in exercise of power conferred under proviso to Article 309. The said statutory Rules governed seniority and transfer of Government servants. The said Rules as they originally stood, did not provide for 'own request transfers' and consequences thereof.

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12.4 The executive instructions contained in the Government Orders dated 2.1.1961 and 27.5.1971 in so far as 'own request' transfers, ceased to apply, once a provision therefor was made the statutory service rules, by amendment. The proviso to Rule 27(a) of the Rules categorically provided that the seniority of an employee getting transferred at his own request to another unit within the same department or to another department will be determined with reference to the date of his joining duty in the new department. This proviso is an exception to the general rule (contained in clause (a) of Rule 27) that seniority of a person shall be determined by the date of the order of his first appointment.

13. The following facts are not in dispute : (i) The contesting private respondents are transferee LDCs who were transferred from the district in which they were appointed to another district, in the same department on their own request. (ii) The appellants are the existing employees, that is local LDCs of the said department in the district to which the transferee LDCs were transferred. (iii) The transferred LDCs (contesting private respondents) were senior to the appellants with reference to their date of appointment as LDCs. But with reference to the date on which they were transferred to the new district, they will become juniors to the local LDCs (appellants). When the proviso to Rule 27(a) of the Service Rules is applied, as rightly held by the learned single Judge and the Division Bench, the seniority of the transferred LDCs has to be reckoned only from the date of their joining duty in the new unit (or district) and they are not entitled to count their service prior to the date of their transfer on their request.

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18. The Division Bench having held that the transferred LDCs would take rank below the juniormost in the category in the district to which they were transferred, could not have held that the seniority list prepared on 7.11.1984 (wrongly giving transferred LDCs seniority from the date of initial appointment as LDCs) should not be disturbed and proviso to Rule 27(a) should be given effect prospectively. The High Court has no power to direct that a Rule which has been in force for several years, will be operated only prospectively that too in a proceeding where the validity of the Rule was not in challenge.

Conclusion

19. In view of the above, we find that the revised seniority lists dated 13.11.1990 and 22.9.1997 under which seniority of transferred LDCs. (inter-district transferees) is counted only from the date of their joining the new district, excluding the previous service, are proper and do not call for interference.

20. These appeals are accordingly allowed. The judgment of the Division Bench of the High Court, to the extent it directs that G.O. dated 2.1.1981 and proviso to Rule 27(a) of the Rules will apply prospectively, and that the promotions made with reference to the seniority list dated 7.11.1984 should not be disturbed, is set aside. The writ petitions filed by the transferred LDCs. are dismissed. As a result of giving effect to the seniority list dated 13.11.1990 and 22.9.1997, if the positions of the transferred LDCs. are altered to their disadvantage, we direct that no consequential recovery shall be made from them, on the ground of excess payment."

(xiii) **Ram Janam Singh vs. State of U.P. & Anr. (1994) 2 SCC 622**, the Apex Court has held as under:

"It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons, can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment in matters of seniority has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 309 of the Constitution. The far-reaching implication of such rules need not be impressed because they purport to affect the seniority of persons who are already in service. For promotional posts, generally the rule regarding merit and ability or seniority-cum-merit is followed in most of the services. As such the seniority of an employee in the later case is material and relevant to further his career which can be affected by factors, which can be held to be reasonable and rational."

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50. In Government of Andhra Pradesh & Ors. vs. M.A. Kareem & Ors. [(1991) Supp. 2 SCC 183], this Court made a distinction between appointments from one cadre to another, stating:

"It has to be appreciated that the cadre of the Chief Office is altogether different from cadre of the district police offices/units where the respondents were earlier appointed and they were not liable to be transferred to the Chief Office. The service conditions at the Chief Office were better, which was presumably the reason for the respondents to give up their claim based upon their past services. It is true that the differential advantage was not so substantial as to attract every LDC working in the district offices/units, and in that situation the letter Annexure 'B' had to be circulated. However, so far as the respondents and the two others were concerned, they found it in their own interest to forgo their claim of seniority on the basis of their past services and they did so."

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56. There is another aspect of the matter. The Appellants herein were not joined as parties in the writ petition filed by the Respondents. In their absence, the High Court could not have determined the question of inter se seniority. [See Prabodh Verma & Ors. vs. State of U.P. & Ors. (AIR 1985 SC 167).] In Ram Janam Singh (supra) this Court held:

"...It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons, can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment in matters of seniority has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 309 of the Constitution. The far-reaching implication of such rules need not be impressed because they purport to affect the seniority of persons who are already in service."

24. From the arguments advanced by the learned for the parties and on perusal of the various judgments of the Apex Court regarding transfers and seniority referred to above, it is abundantly clear that

when a transfer is ordered from one cadre to another in public interest, the transferee shall carry with him his original seniority when posted in the new cadre and if the transfer is not in public interest but on the request of the employee concerned, he will lose his seniority in the parent cadre and join the new cadre with bottom seniority i.e. below the last employee in the seniority list of that cadre. The transfers on public interest are ordered by the Government in the larger interest of the public and based on the conditions of service such as All India transfer liability etc. The transfers on 'spouse ground' and on 'compassionate ground' are not automatically made by the Government but they are made on the requests of the employee concerned. Now the question is whether any 'public interest' is served by transferring and posting the spouse at the station where the other spouse is posted. It is purely a policy matter which the Government has to take after due consideration of all the relevant facts including the legal rights of others who may be adversely affected. The policy of the Government of India so far in general is that in the case of Inter-cadre transfers made on the request of the employee concerned even on 'spouse ground' or on 'compassionate ground', the transferred employee would lose the seniority position enjoyed by him in his parent cadre. Same was the position maintained so far by the respondents themselves in the matter of Inter-Commissionerate Transfers of their Group-B, C and D officials. The impugned orders granting ICTs to Group-B, C and D employees beyond the Commissionerate having common cadres i.e. from one cadre controlling authority to another, without any loss of seniority stating that such transfers are made in public interest, and, therefore, there is no question of any loss of seniority is a shift in policy. The respondents have issued those orders by interpreting the DoPT's O.M.No.28034/7/86-Estt(A) dated 3.4.1986 as amended from time to time which provide that "a husband and wife are, as

far as possible, and within the constraints of administrative convenience, posted at the same station" whether the CBEC is empowered to take such a policy decision or not. The questions those would arise in this regard are (i) whether the CBEC's aforesaid interpretation of the DoPT's order is with the prior approval of the DoPT and if not (ii) whether the CBEC has the competence to make such an interpretation. The records made available by the respondents show that the advice of the DoPT was not obtained by them before they have issued the impugned orders. The CBEC is only a subordinate office under the Department of Revenue which in turn is under the Ministry of Finance, Government of India. Clause (3) of Article 77 of the Constitution of India has provided for the Allocation of Business of India among the Ministries. In terms of the aforesaid provision of the Constitution, the President has promulgated "the Government of India (Allocation of Business) Rules, 1961". "Recruitment, Promotion and Morale of the Services" is one of the businesses allocated to the Department of Personnel and Training under the Ministry of Personnel, Public Grievances & Pensions and the "general question relating to recruitment, promotion and seniority pertaining to Central Services except Railway services and under the control of Department of Atomic Energy, the services under the Department of Defence Research and Development, the erstwhile Department of Electronics, the Department of Space and Scientific and Technical services under the Department of defence Research and Development" come under the same Head. It is, therefore, seen that the policy decision regarding the seniority pertaining to the Central Services is within the exclusive jurisdiction of the DoPT. Individual Ministries/Departments/offices cannot be allowed take its own separate decisions regarding the seniority of their employees without the concurrence of the DoPT. Otherwise, there will be chaos in the matter of personnel

administration in the various Ministries/Departments/Subordinate Offices of the Government of India. The applicants in these O.As have not made the DoPT a respondent. However, this Tribunal has directed Mr Millu Dandapani, the learned ACGSC for respondents in O.A.835/2009 to ascertain from the DoPT whether they have to say anything in the matter. However, inspite of his best efforts, they did not give any assistance in the matter.

25. In the above facts and circumstances of the case, we consider that it is premature for this Tribunal to adjudicate upon the question whether the ICT on 'spouse ground' and on 'compassionate ground' is in public interest or not. We, therefore, allow O.As 643/2009, 650/2009 and 835/2009 and dismiss O.A.400/2010. Consequently, we also quash and set aside the impugned orders F.No.A.22015/19/2006-Ad.III.A dated 27.3.2009, letter F.No.A.22015/11/2008-Ad.III.A dated 29.7.2009 and letter F.No.A.22015/18/2009.Ad.III.A dated 7.8.2009 to the extent that the ICTs of Group-B, C and D officers on 'spouse ground' as well as on 'compassionate ground appointments' have been allowed without loss of seniority. However, the respondent-CBEC is at liberty to take up the matter with the DoPT, Government of India to take appropriate decision in the matter.

26. There shall be no order as to costs.

K NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 400/2010
Original Application No. 262/2012
Original Application No. 505/2011
Original Application No. 784/2011

FRIDAY, this the ..10th day of JULY, 2015

CORAM:

HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MRS.P.GOPINATH, ADMINISTRATIVE MEMBER

OA No. 400/ 2010:

Joseph K.John, s/o K.K.John, aged 43 years,
Inspector of Central Excise,
Service Tax Audit Party No. IV,
Internal Audit, Calicut Commissionerate,
Calicut, Kerala.

..... Applicant

(By Advocates Mr. O.V.Radhakrishnan,Sr., Mr.Antony Mukkath)

Versus.

1. The Commissioner of Central Excise (Cadre Controlling)
Cochin Commissionerate,
C.R. Building, I.S.Press Road,
Cochin -18.
2. The Chief Commissioner of Central Excise,
Kerala Zone, C.R. Building, I.S.Press Road,
Kochi -682 018.
3. The Chief Commissioner of Central Excise,
Mumbai Zone,115, M.K.Road, Church Gate,
Mumbai -400 020.
4. Union of India, represented by Secretary,
Department of Revenue, Ministry of Finance,
New Delhi Respondents

(By Advocate Mr.N.Anil Kumar, Sr.PCGC(R)

OA 262/2012:

Shemmy Jose, d/o Sri P.P.Jose, aged 42 years,
Inspector of Central Excise (on deputation),
Office of the Superintendent of Central Excise,
Service Tax Range, Trissur, residing at 'Bethlahem',
Enarc Gardens, Cheroor Post, Thrissur -680 008. Applicant

(By Advocates Mr.O.V.Radhakrishnan Sr.,
Mrs. K.Radhamani Amma,
Mr.Antony Mukkath,
Mr.K.Ramachandran,
Mr. K.Muralidharan Nair)

Versus.

- 1 Union of India, represented by Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi -110 001.

2 Under Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Central Board of excise and Customs,
HUDCO Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi -110066.

3 Central Board of Excise and Customs represented by
its Chairman, North Block, New Delhi -110 001.

4 Commissioner of Central Excise, Customs &
Service Tax, Central Revenue Building, I.S.Press Road,
Kochi -682 018.

5 Commissioner of Central Excise, Custom and
Service Tax, Central Revenue Building, Mananchira,
Kozhikode.

6 Chief Commissioner of Central Excise,
Customs and Service Tax, Vadodara Zone,
2nd Floor, Annex Building, Race Course Circle,
Vadodara – 390 007.

7 Chief Commissioner of Central Excise, Customs &
Service tax, Cochin Zone, Central Revenue Building,
IS Press Road, Cochin -682018. Respondents

(By Advocate Mr. N.Anil Kumar, Sr. PCGC(R))

OA No. 505/2011:

Rajeev K., s/o the late V.K.Nair, aged 37 years,
Inspector of Central Excise (on deputation),
Office of the Commissioner of Central Excise,
Customs & Service tax, Central Revenue Building,
I.S.Press Road, Kochi -18, presently residing at
4th floor, Providence Plaza, Providence Road,
Kochi -18.

Applicant

(By Advocates Mr. O.V.Radhakrishnan Sr.,
Mrs. K.Radhamani Amma,
Mr.Antony Mukkath,
Mr.K.Ramachandran,
Mr. Gens George Elavinamannil)

versus.

1. Union of India, represented by Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi -110 001.
2. Under Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
HUDCO Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi -110066.
3. Central Board of Excise and Customs represented
By its Chairman, North Block, New Delhi -110 001.
4. Commissioner of Central Excise, Customs &
Service Tax, Central Revenue Building, I.S.Press Road,
Kochi -682 018.

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5 Commissioner of Central Excise and Customs,
Commissionerate Surat –I, New Central Excise Building,
Opposite Gandhi Baug, Chowk Bazar, Surat -395 001.

6 Chief Commissioner of Central Excise, Customs &
Service tax, Cochin Zone, Central Revenue Building,
I.S. Press Road, Cochin -682018. Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

OA No. 784/ 2011.

Jyothi Sukumaran, D/o late A.R.Nair, aged 41 years,
Inspector of Central Excise (on deputation),
Office of the Deputy Commissioner of Central Excise and
Service Tax, Divisional Office, Sakthan Thampuran Nagar,
Thrissur-1, residing at 'Jyothis' Mookoni House, Adiyat Lane,
Poothole, Thrissur-4.

.... Applicant

(By Advocate Mr.O.V.Radhakrishnan, Sr.
Mr. K.Muralidharan Nair)

Versus.

1. Union of India, represented by Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi -110 001.
2. Under Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Central Board of excise and Customs,
HUDCO Vishala (9th Floor), Bhikaji Cama Place,
R.K.Puram, New Delhi -110066.
3. Central Board of Excise and Customs represented by
its Chairman, North Block, New Delhi -110 001.
4. Commissioner of Central Excise, Custom and
Service Tax, Central Revenue Building, Mananchira,
Kozhikode
5. Chief Commissioner of Central Excise,
Customs and Service Tax, Vadodara Zone,
Vadodara
6. Chief Commissioner of Central Excise, Customs &
Service tax, Cochin Zone, Central Revenue Building,
I.S Press Road, Cochin -682018. Respondents

(By Advocate Mr.N.Anil Kumar, Sr.PCGC(R)

These Original Applications having been heard on 08.06.2015, this Tribunal
on 10.07.15 delivered the following:

BY HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

The question which calls for adjudication in these cases is whether the administrative instructions for inter-commissionerate transfers (ICT, for short) in the respondent Department on 'spouse' ground and 'compassionate' ground are transfers strictly in public interest, to enable the transferred officer to carry over the benefit of his seniority in the parent commissionerate to the new commissionerate or not.

2. Before 19.02.2004, inter- commissionerate transfers were permissible subject to loss of seniority. However, later, on 19.02.2004, Respondent No. 2 Central Board of Excise and Customs (Board, for short) vide Annexure A/1 communication addressed to all Commissioners of Central Excise and Customs informing that no inter-Commissionerate transfer shall be allowed to any Group B, C & D employee and that in exceptional circumstances depending upon the merits of each case, such transfers shall be allowed on deputation basis for a period of 3 years subject to approval of the transferor and transferee cadre controlling authorities. Further extension in deputation can be made by the Commissioners concerned for a further period of one year by the Chief Commissioners concerned on mutually agreed basis.

3. Out of the four OAs under consideration in this order, OA No. 400/10 was adjudicated by this Tribunal along with other connected cases ie. OA 643/09, 650/09, 835/09 vide Annexure A/15 common order dt.16.05.2011. OA Nos. 505/11 and 262/12 were also disposed of by this Tribunal by another order on 05.02.2013. The aforesaid two orders of this Tribunal were challenged in the High Court of Kerala in OP Nos. 3046/11, 304/13, 655/13 and 656/13. The High Court disposed of those OPs vide a common judgment dt. 04.02.2014 setting aside the orders of this Tribunal and holding that the question as to whether ICTs on 'spouse' ground or 'compassionate' ground is eligible to be treated as a ground of public interest, has to be decided by this Tribunal.

4. As the subject matter involved in the four OAs captioned above is one and the same, a common order is being passed in these OAs. For the purpose of reference, we take into account the details given in OA No. 262/2012.



5. Applicant in OA 262/12 was an applicant for inter- commissionerate transfers from deputation basis from Central Excise, Vapi Commissionerate (Gujarat) to the Calicut Commissionerate in the Central Excise Kerala zone. She was granted posting order at Calicut Commissionerate vide Annexure A/2 on 17.01.2007. She joined duty on 09.04.2007 at Calicut. Her deputation was extended for a further period of one year vide Annexure A/4 order. The maximum period of deputation allowed was for five years. Thereafter, based on the OM issued by the Department of Personnel and Training (DoPT) on posting of husband and wife at the same station, the Board vide Annexure A/5 order dt. 27.3.09 partially relaxed the instructions in Annexure A/1 order, permitting inter-commissionerate transfers without any loss of seniority to facilitate the posting of husband and wife at the same station in line with the instructions of DoPT. Annexure A/5 dt. 27.03.09 issued by the Board reads:

"... The Board deliberated upon the issue in its meeting held on 04-3-2009 and have decided to partially relax the earlier instructions of the Board as referred to above, in order to facilitate posting of husband and wife at the same station in line with the instruction of the DOPT. Accordingly, it has now been decided to permit inter-Commissionerate transfers of Groups –B, C and D Officers beyond the Commissionerates having common cadres, i.e. from one Cadre Controlling Authority to another, without any loss of seniority", subject to certain conditions.

6. On 08.04.2009, the applicant submitted A/10 application seeking inter-commissionerate transfer from Vapi, Gujarat to Calicut Commissionerate in Kerala in terms of Annexure A/5 instructions. She has relied on the 'spouse' ground mentioned in Annexure- A/5 for such transfer. As there was no response, she gave Annexure- A/11 representation dt.06.09.2011 which also did not yield any response. In the meantime, the Board issued Annexure -A/12 instructions dt.27.10.2011.

7. Applicant contends that Annexure- A/12 instructions did not recall, cancel or modify Annexure - A/5 to A/7 instructions relating to transfers on 'spouse' ground. As per Annexure -A/12, the ban on the inter-commissionerate transfer has been lifted and all employees in Groups B, C and D are entitled to inter -commissionerate transfer without seniority. The applicant again made a request through another representation Annexure - A/13 dt 17.11.2011 for granting inter-commissionerate transfer on 'spouse'

ground. According to applicant, there are 53 vacancies in the Kochi Commissionerate, in the cadre of Inspectors. Therefore applicant states that she is entitled to inter-commissionerate transfer in terms of Annexure - A/5 O.M. Relying on Annexure A/16 OM dt. 3.07.1986 consolidating the orders on seniority issued by the DoPT, which states that in transfers not strictly in public interest the transferees will be placed below all officers appointed regularly to the grade, applicant states that the necessary corollary is that in case where transfers are made strictly in public interest such transferees shall not entail loss of seniority. She contends that transfer of employees on 'spouse' ground is strictly in public interest and therefore even if she is transferred in terms of A/5 and A/7 instructions, she shall not suffer any loss of seniority.

8. The cases of the applicants in OA Nos. 784/2011, OA No. 505/2011 and OA No. 400/2010 are also similar.

9. Hon'ble High Court while setting aside Annexure A/15 common order and the common order dt.05.02.2013 in OA Nos. 505/2011 and 262/2012 of this Tribunal observed:

"2. The crux of the issues is as to whether the ICT granted on the basis of spouse ground or compassionate ground deserves to be treated as transfers in public interest for protection of seniority which the officer may be allowed to carry from the parent commissionerate to which that officer is transferred".

.....

"5. Having heard the learned senior counsel, the other learned advocates for the petitioners and the learned central Government counsel, we see that there are different OMs issued by the Department of Personal and Training (DoPT) governing the field of transfer; seniority; transfer on spouse ground; transfer on ground of physical disability; etc. When DoPT instructions regulate such field, the efficacy of the decisions of the individual departments as contained in letters issued by the departments to the subordinate officers may have to be considered differently. Be that as it may, the primary thrust of transfer on spouse ground, even going by the DoPT OMs is a preference given to women and children, having regard to the welfare of family as a unit. Whatever that be, the issue cannot be concluded finally without deciding as to whether the transfer on spouse ground or compassionate ground are to be treated as strictly in public interest for the purpose of enabling an officer to carry his seniority from his parent commissionerate to the commissionerate to which that officer is transferred at his request on such ground in terms of the ICT norms."

"7. On the whole, we are of the view that in none of the matters which are before us, the Tribunal had the opportunity to adjudicate on the aforesaid issue. The tribunal had, in fact, excluded itself from doing so, may be due to paucity of materials and pleadings showing the development of the field occupied by the DoPT instructions and other relevant particulars, chronologically. We are of the clear view that the issue is not premature and it has to be decided. Otherwise, it has to go back to the authority of the first instance which will be the controlling authority of a particular commissionerate to decide on this particular issue of law and then apply to settle the inter se seniority. That may not be in the interest of the employees or the establishment, more importantly because, DoPT's views would have primacy."

10. Therefore, in the light of the above observations of the High Court, the question to be considered by us in these OAs is whether the ICTs on 'spouse' ground, 'compassionate' ground and 'disability' grounds without loss of seniority are transfers



strictly in public interest or not ?. Since the mandate of this Tribunal is to adjudicate on the public interest aspect of the above modes of ICTs which obviates loss of seniority, we are not delineating the rival contentions of the parties in these OAs.

11. When these OAs were taken up for hearing, OA 643/2009 also was taken up. Shri Shafik M.A., learned counsel for the applicant therein submitted that in the light of Annexure- MA/1 (produced along with MA/180/00398/14 in that case) -Annexure A/12 in the present case - applicants in OA 643/2009 are withdrawing that OA. Accordingly, OA643/2009 was closed as withdrawn. OA 650/ 2009 and OA 835/2009 which were also remanded back to this Tribunal along with the present OAs were not prosecuted by the applicants therein who included the Cochin Customs Ministerial Association and All India Excise Inspectors Association, presumably for the reason that they have been satisfied with Annexure A/12 administrative instructions issued by the Board on 27.10.2011.

12. The short but poignant question involved in this case is whether ICTs on 'spouse' ground, 'compassionate' ground and 'physically 'handicapped' ground without entailing loss of seniority are transfers made in public interest? Annexure A/5 to A/7 are administrative instructions on ICTs in respect of Groups B, C & D employees. Though inter-commissionerate transfers were initially allowed, adopting the norm of bottom seniority in the cadre to which the employee is transferred, subsequently such ICTs came to be banned as they generated administrative difficulties resulting in litigation. The facility of ICTs was restored vide Annexure- A/5 based on DoPT's instructions relating to 'spouse' ground. While permitting ICTs on 'spouse'ground, the Board In Annexure- A/5 went a step further than what was envisaged in the said DoPT guidelines, allowing the employees so transferred to retain the 'seniority' they had been assigned in the seniority unit from where they were transferred.

13. DoPT is the Department ordained with the matters relating to recruitment, promotion and morale of the services by virtue of the Govt. of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of the Constitution of India. Annexure- A/8 is the consolidated guidelines issued by the DoPT on 'posting of husband and wife at the same station'. It provides for mandatory posting of spouse at the same station if they are in the Central services or working in same Department and if posts are available. It facilitates spouses to be posted at the same station when one



spouse belongs to All India Services and the other spouse belongs to Public Sector Undertaking. It also facilitates posting of spouses at the same station or in the same State if one spouse employed under the Central Government and the other spouse is employed under the State Government. The introductory portion of Annexure A/8 OM dt. 30.09.2009 issued by the DoPT throws some light on the *raison d'etre* and evolution of the policy decision taken by the Government of India in posting husband and wife at the same station. It reads:

"In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOPT&T in O.M.No.28034/7/86-Estt.(A) dated 3.4.86 and No. 28034/2/97-Estt.(A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins./Deptts. to follow the above guidelines in letter and spirit.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station. It is also necessary to make the provisions at Para 3(iv) and (vi) of the O.M. dated 3.4.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary.

3. On the basis of the 6th CPC Report, Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. On similar lines, provisions of O.M. dated 12.6.97 have been amended.

4. The consolidated guidelines will now be as follows:-

14. Although no elaborate justification has been made for the inter-commissionerate transfers on 'compassionate' grounds and 'physical disability' grounds as seen in Annexure A/5 to A/7 and A/12, the rationale is quite obvious. Appointments on 'compassionate' ground are granted to dependents of the employees under the Central Government who die in harness, to prevent the family of such employee from falling into vagrancy on account of the sudden loss of income from its bread-winner. Detailed consolidated guidelines on appointment on 'compassionate' ground have been issued by DoPT vide OM.No.14014/6/94-Estt(D)dt. 9-10-1998. Similarly, appointment given to 'physically handicapped' persons is also a policy of the Government based on the statutory obligations as per 'Persons with Disabilities (Equal opportunities, Protection of Rights and Full participation) Act, 1995 and also to meet the international obligations under the 'UN Convention on Persons with Disability' to which India is a signatory.



15. We shall now deal with the ICTs on 'spouse' ground as per the administrative instructions issued by the Board in Annexure A/5 to A/7 in the light of Annexure A/8 OM dt. 30.09.2009 issued by the DoPT.

16. Although Hon'ble High Court has directed this Tribunal to make DoPT a party as it is the fountain head of the personnel administration under Government of India, no effective assistance came from the counsel engaged by the DoPT. No interested persons came forward for getting themselves impleaded in these OAs. None of Employees' Associations / Unions working under the respondents has chosen to get them impleaded subsequent to the judgment of the High Court. Apart from what has been provided to us by way of the record in these cases, no other materials were furnished by the DoPT which is already a party (Respondent No.1 in OA 362/12 , OA 784/11 and also in OA 505/11).

17. On remand by High Court, the matters we are called upon to consider in these OAs, broadly are:

- (i) Are ICTs on 'spouse' ground, 'compassionate' ground and 'physical disability' grounds strictly in public interest to enable the transferred officer to carry over the benefit of seniority to the new Commissionerate *de hors* the seniority status of the other officers in the similar cadre in the host commissionerate ?
- (ii) The heart burn of the officers who were already working in the host commissionerate,
- (iii) Materials and pleadings showing the development of the field occupied by DoPT instructions and other relevant particulars, chronologically.
- (iv) Primacy of the views of DoPT would have in such matters.

18. We have heard Shri O.V.Radhakrishnan, Senior Advocate for applicants in these OAs and the learned Central Government Counsel. As noted above, when these remanded matters were taken up for hearing, OA 643/2009 was withdrawn by the counsel appearing for the applicants therein contending that they are satisfied with the subsequently issued Annexure -A/12 instructions which provides for ICT on bottom seniority basis .



19. Mr. O.V.Radhakrishnan, Senior Advocate appearing for the applicants in the OAs on hand argued the matter at length. At the outset of his argument, he pointed out that by the judgment 4-2-2014 of the High Court remanding these matters, the whole issue is at large. The arguments of the learned senior advocate are five-pronged. According to him :

- (i) seniority is not a right but is only a facet of the different interests of Government servants which cannot be categorised as a service condition or as a right.
- (ii) seniority does not always lead to promotion,
- (iii) chances of promotion are not conditions of service and hence the mere aspirations for promotion do not require protection from the Court/ Tribunal.
- (iv) the only right of the government servant is a right to be considered for promotion
- (v) ICTs on 'spouse' ground, 'compassionate' ground and 'physically handicapped' grounds are policy decisions of the Government made in public interest.

We shall examine these arguments in the light of the directions issued by the High Court.

20. Annexure A/16 OM dt.03.07.1986 is the consolidated orders issued by the DoPT on the subject of 'Seniority'. Para- 3 of the OM deals with seniority of transferees. Para 3.5 deals with seniority in cases transfers are not in public interest. It reads:

"3.5. In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

21. The provision extracted above is generally known as the 'principle of bottom seniority' followed when request for transfer to a different seniority unit is granted on personal grounds. The normal rule relating to transfers on the request of officers to a different seniority unit is that such transferred officers will be ranked below all the direct recruits or promotees as the case may be as per the existing seniority list. Learned counsel for the applicant submitted that though Annexure - A/16 OM does not

specifically state that the employees who have been transferred strictly in public interest would carry their seniority in the parent unit along with them, the corollary of what is stated in para 3.5 quoted above is that when transfer is made strictly in public interest, the transferred officers will carry their seniority to the transferred unit. According to learned counsel for the applicant, the corollary of para 3.5 of Annexure A/16 OM is an exception to the general rule.

22. It is well settled position that transfer is an incidence and a necessary concomitant of service. A person with all India transfer liability is obliged to serve anywhere in India. Such Government employees cannot have any vested rights to remain posted at one place or another. Normally such transfers are made in administrative exigencies. In such cases, as the transfer is considered as in public interest, i.e. the transferred officer will carry all the service benefits including his seniority to the transferred unit. In establishments with different seniority units having their operations on an all India basis, seniority in each unit is a matter of concern for the employees as it often has some nexus with promotion. The Departments under the Central Government like Income Tax, Central Excise & Customs, BSNL, Posts, etc. have different seniority units at the regional level for employees belonging to Class C and D. These establishments maintain all India seniority also for higher posts. Nevertheless, in the instant cases, the administrative instructions in Annexure A5 to A/7 and A/12 on ICTs relate to the Group B, C & D officers only. As per those instructions ICT on the 'spouse' ground, 'compassionate' ground and 'physically handicapped' ground is permitted to Group B, C & D officers in the respondent department without any loss of seniority.

23. Supreme Court of India in *K.P.Sudhakaran and another v. State of Kerala and others* (2006) 5 SCC 386 had the occasion to consider inter-cadre transfers on personal considerations. The Apex Court held:

"11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is

transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules".

Thus it is clear that when a Government servant is getting transferred to another seniority unit or department on his personal considerations, he cannot be permitted to disturb the seniority of the employees in the department unit to which he is transferred. According to the learned counsel for the applicants the obvious corollary to this position is that the Government servants who are transferred on public interest do not have to forego the seniority they have acquired in their parent unit.

24. Now, the question which needs examination is whether ICTs on 'spouse', 'compassionate' and 'physically handicapped' grounds are made in public interest or in private interest? In this context we need to examine the scope and extent of public interest in such transfers. The term 'public interest' has been given a meaning in Black's Law Dictionary as follows:

Public Interest: Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government.

(Black's Law dictionary, Fifth edition, West Publishing Co., 1979)

The term 'public interest' was considered by the Apex Court in different judgments in different contexts. In *Premium Granites v. State of T.N.*(1994) 2 SCC 691, the Apex Court observed :

The expression "public interest" finds place in the Constitution and in many enactments which have since been noted and considered by this court in various decisions. The said expression is, therefore, a word of definite concept".

In the context of compulsory retirement of Government servants, the Apex Court in *State of Gujarat v. Suryakant Chunilal Shah* (1999) 1 SCC 529, observed :

"11. What is "public interest" was explained in the classic decision of this Court in *Union of India v. Col.J.N.Sinha*. It was pointed out that the object of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the service of the dishonest or the corrupt or who are almost dead wood, are to be dispensed with. This Court observed : (SCC pp.461-62, paras 9-11)

"Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the government servants. That Rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the



Rule. In some cases, The Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the Rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorilyretired government servant does not lose any of the benefits earned by him till the date of his retirement. Three month's notice is provided so as to enable him to find out other suitable employment...."

In a case relating to commissioning of pipes, steel tanks etc. in a thermal power station, the Court in *Raunaq International Ltd. v. I.V.R. Construction Ltd. and others* (1999) 1 SCC 492 examined the scope of 'public interest' in a different context. It observed:

"The elements of public interest are : (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) the public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work - thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation."

'Public Interest' in the context of judicial administration was a topic of discussion in *K.Ashok Reddy v. Government of India and others* (1994) 2 SCC 303. In that case the Apex Court held that the power of transfer of High Court judge under Article 222 of Constitution of India is to subserve a public purpose and for promoting public interest for "better administration of justice" throughout the country (para 30).

25. We note that the term 'public interest' carries varying contextual meanings. But in the cases captioned above, we need to examine the scope of public interest involved in ICTs on 'spouse' ground, 'compassionate' ground and 'physically handicapped' ground. In the first blush, one may think that request transfers on the aforesaid grounds of 'spouse', 'compassionate' and 'physically handicapped' are strictly personal considerations for the seekers of such transfers. However, on a close

examination of the ICTs on the aforesaid grounds, one can see that the administrative instructions contained in Annexure A/5 to A/7 are integrally sourced from the policy decisions of Government of India on those matters purveyed through the different OMs issued by the DoPT. Annexure A/8 is the consolidated guidelines issued by the DoPT vide OM dt.30.09.2009 on the subject "posting of husband and wife at the same station". The introductory portion of the said OM reads:

" In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOPT&T in O.M.No.28034/7/86-Estt.(A) dated 3.4.86 and No. 28034/2/97-Estt.(A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins./Deptts. to follow the above guidelines in letter and spirit.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station. It is also necessary to make the provisions at Para 3(iv) and (vi) of the O.M. dated 3.4.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary.

3. On the basis of the 6th CPC Report, Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. On similar lines, provisions of O.M. dated 12.6.97 have been amended.

4. The consolidated guidelines will now be as follows:-

We note that there had been two other OMs issued by DOPT on 03.04.86 and 12.06.97 regarding posting of husband and wife at the same station.

26. Apex Court had an occasion to consider the desirability of posting husbands and wife at the same station. In *Bank of India v. Jagjit Singh Mehta* (1992) 1 SCC 306, the Apex Court observed :

"5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. "

However, in that case the court sounded a word of caution that though it is desirable to post the husband and wife at the same station that does not enable any spouse to a claim it as of a right if the Departmental authorities do not consider it feasible. It was held that exigencies of administration should be the prime concern of the Departmental authorities but the authorities should consider the desirability of having such spouse living together without any detriment to administrative needs and the claim of other



employees. On a close examination of the consolidated guidelines in Annexure A/8 OM also, it can be seen that the policy of the Government is:

"It has been decided that when both spouses are in the same Central Service or working in the same Department and if posts are available they may mandatorily be posted at the same station".

Nevertheless, Annexure A/8 OM says:

"it is also necessary to make provisions at Para 3 (iv) & (v) of OM dt. 03.04.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary".

This shows that while issuing Annexure A/8 OM, the Govt. of India was conscious that such transfers from different seniority units would result in upsetting of the seniority of aspirants for such inter-cadre transfers. Yet the Government adopted it as the policy, having regard to the welfare of family as a unit. [Though single parent family is not unfamiliar in other jurisdictions, our culture and ethos are yet to come to grips with it.]

As stated earlier, Annexure-A/8 is a consolidation of the policy decisions of the Central Government. It has the status of an executive order binding on all departments under the Government of India. Generally speaking, the policies of the Government are often in concordance with the public interest. When the policy decisions are relating to public administration it needs to be concomitant with good governance. In other words, in matters relating to public administration, the policy decisions should be purposive and should be aimed at achieving good governance.

27. On examination of the rationale behind granting of ICT without affecting seniority to Govt. servants on 'compassionate' grounds, one can see that special concessions have been given to the dependents of Govt. servants who died in harness. Revised consolidated instructions on the scheme for 'compassionate' appointment under the Central Govt. issued vide OM No. 14014/6/94-Estt.D dt. 09.10.98 by the DoPT envisages 5% reservation for dependents of Govt. servants who die in harness in Group C & D posts earmarked for direct recruitment, in order to mitigate the financial hardship faced by their family due to the sudden death of the bread-winner. Appointment on 'compassionate' ground is a special provision made by the Government in order to avoid the family of the deceased Govt. servant falling into vagrancy. This is in tune with the public assistance in cases of 'undeserved want' contemplated under

Article 41 of the Constitution. In the case of reserving 3% to persons with disability, it is a statutory obligation of the Govt. as per the provisions of "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

28. By any stretch of imagination, it cannot be gainsaid that public assistance in the form of appointment on compassionate ground and the special concessions given to government employees with disability are in tune with public interest. On a close look at the special circumstances under which such persons are given appointment, it can be easily discerned that they deserve some protection which would enable them to enjoy the fruits of such appointments. If a disabled person or the dependent of a person dying in harness is appointed and posted at a distant place away from family, no useful purpose would be served by such appointments. In the case of a dependent Govt. servant securing appointment on 'compassionate' ground is posted far away from the family of the deceased, s/he will not be able to give the required economic support to the dependents of the deceased as s/he will be forced to maintain two establishments, one at the place where s/he is posted and the other at the place where the family of the deceased is living.

29. One can see that 'public interest' sometimes coalesces with 'private interest'. But that does not mean that in the cases of ICT on the grounds of 'spouse', 'compassionate' and 'Physical disability', the transfers are motivated by private interest alone. As it was seen, in the case of ICT on 'spouse' ground, it is the policy of the Govt. to have husbands and wife posting together considering the welfare of the family as a single unit. Since the parties involved in such ICTs are individual human beings, necessarily, such ICTs serve individual interests as well. But one shall not be oblivious to the larger public interest resulting from such transfers. Such ICTs help to remove the frustration of the spouses who live separately on account of their posting at different places. If they are placed at the same place, it would facilitate good parenting and good upbringing of children. It is a well-accepted fact that in the absence of proper parental care children may become problematic and disoriented without proper guidance. The Directive Principles of State Policy in Article 39 (f) envisages to provide opportunity to children to develop in a healthy manner and in conditions of freedom and dignity and to

protect them from moral and material abandonment .Posting of husband and wife at the same station in ordinary circumstances would provide healthy atmosphere to discharge the official duties and responsibilities more efficiently and satisfactorily. In that way, it serves the social interest as well. It promotes the public interest of good governance by putting in improved efficiency in government service. Therefore, we consider that the policy of the Govt. to allow transfer on 'spouse' ground without loss of seniority has a social goal as envisaged in Part IV of the Constitution and that the same is in the larger interest of the public.

30. The rationale for special concessions to Govt. servants appointed on 'compassionate', 'physically handicapped' grounds, and to the women employees being rooted on the Constitutional ideals, *a fortiori* it is only in public interest that they are given a special treatment in the matter of ICT. In the case of Govt. servants with physical disability, ICT without loss of seniority is in tune with the fundamental duty under Art. 51A (k) of the Constitution which calls for facilitating the differently abled persons to strive towards excellence in all spheres of individual and collective activity. Any policy that promotes the interests of women and children is in concordance with the Directive Principles of State Policy envisaged in Part IV of the Constitution of India and hence necessarily to be regarded as in public interest.

31. Art. 37 of the Constitution directs that the principles contained in Part IV of the Constitution are fundamental in the governance of the country and that it shall be duty of the State [and its instrumentalities] to apply those principles in making laws which will enjoy the saving shield of Art. 31C.

32. Another question to be examined in this context is the competency of the Board to issue Annexure- A/5 to A/7 instructions protecting the seniority of the employees transferred in ICT. It is the settled law that even in the exercise of power in Public Interest, such exercises must satisfy reasonableness. In *Premium Granites* case(*supra*), it was held by the Apex Court that the exercise of powers in public interest cannot be made in arbitrary or capricious manner based merely on the subjective satisfaction of the authority (para 48-49 of the Apex Court decision).

33. We note that as per the Govt. of India (Allocation of Business), Rules, 1995, DoPT is the authorised wing of the government to deal with service matters of Govt. servants under the Union of India. We are of the view that Annexure A/5 & A/7 have been issued by the Board keeping in tune with the policy of the Govt. of India regarding posting of husband and wife together notified through various OMs issued by the DoPT. Similarly, we are of the opinion that Annexure A/5 to A/7 are in tune with para 3.5 of the Annexure A/16 OM consolidated orders on seniority issued by the DoPT on 3.7.86. Since DoPT is the specialised wing of the Govt. of India anointed to deal with personnel administration, one may doubt whether the Board, which is only a lower formation under the Department of Revenue in the Ministry of Finance, is competent to issue Annexure A/5 to A/7 administrative instructions on a highly sensitive issue relating to the seniority of employees. The High Court directed this Tribunal to implead the DoPT and other interested persons. In the OAs captioned above, DoPT has already been arrayed as a party.

34. The next aspect we have to deal with is the heart burn of the officers who are already in the host seniority unit where the officers of ICT on 'spouse' ground, 'compassionate' ground and 'physical disability' ground have come and joined without any loss of seniority. In this regard, Shri O.V.Radhakrishnan made strenuous arguments to drive home the position that seniority is not a vested right of the Govt. servants but it is only one of the facets of the different interests Govt. servants may have in the Govt. service. He further attempted to establish that since the right to seniority and right to promotion are not vested rights of a Govt. servant, they cannot come up with a grievance that by granting the ICT on 'spouse' ground, 'compassionate' ground or 'physical handicapped' ground without loss of seniority, their seniority would be infringed. He further argued that a Govt. servant has only a right to be considered for promotion which is a fundamental right protected under Article 16, but not a right for promotion *per se*. Shri O.V.Radhakrishnan referred to the decision of the Apex Court in *Ashok Kumar Gupta v. State of U.P.* (1997) 5 SCC 201 where the Apex Court held :



"21. Seniority is a facet of interest. When the Rules prescribe the method of selection/recruitment, seniority is governed by the ranking given and governed by such Rules as was held by a Bench of three judges in *A.K.Bhatnagar v. Union of India*. In *Indian Administrative Service Association, U.P. v. Union of India*, another bench of three judges had held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules. In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India* a Bench to which two of us, K.Ramaswamy and G.B.Patnaik J.J., were members, following above ratio, held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules".

In *State of Jammu and Kashmir v. T.N.Khosla* AIR (1974) SC 1 the Apex court said:

"22. If Rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or Constitutional authority which for its exercise requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a precondition of the validity of rules of service, the contractual origin of the service notwithstanding". [emphasis added]

35. Arguing that chances of promotion are not conditions of service, the senior counsel referred to yet another decision of the Apex Court in *K.Jagadeesan v. Union of India* (1990) 2 SCC 228. The court held:

"a right to be considered for promotion is a term of service, but mere chance of promotion are not; so also the eligibility for promotion..... Chances of promotion are not conditions of service which are defeasible in accordance with the Rules. Thus it is a settled principle in the service jurisprudence that mere chances of promotion are not conditions of service and a candidate appointed in accordance with the rules can steal a march over his erstwhile seniors in the feeder/ lower cadre.... "

He then referred to the dictum of the Apex Court in *Ashok Kumar Gupta* case (*supra*):

"no one has vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules. It could be taken away only by operation of valid law".

The Apex Court further observed in *Ashok Kumar Gupta* :

"22. In service jurisprudence, a distinction between right and interest has always been maintained. Seniority is a facet of interest. When the Rules prescribe the methods of selection/recruitment, seniority is governed by the ranking given and governed by such rules as was held by a bench of three judges in *A.K.Bhatnagar & Ors. V. Union of India & Ors* [(1993) supp. 1 SCC 730 in paras 14 & 15] another Bench of three judges had held that no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the rules. In *A.B.S.K.Sangh v. Union of India & Ors* [JT (1996) SC 274], a Bench to which two of us, K.Ramaswamy & G.P.Pattanaik, JJ., were members, following the above ratio, held that no one has a "vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the rules". It could be taken away only by operation of valid law. In *M.D. Shujat Ali & Ors. v. Union of India & Ors* [(1975) 1 SCR 449] a Constitution Bench had held that Rule 18 of the Andhra Pradesh Engineering Service Rules which confers a right of actual promotion or a right to be considered by promotion is a rule prescribing conditions of service. In *Md.Bhakar v. Krishna Reddy* [1970 SLR 768],

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another Bench of three judges had held that any rule which affects that promotion of a person relates to conditions of service. In **State of Mysore v. G.B.Purohit** [1967 SLR 753] a Bench of two judges had held that the rule which merely affects chances of promotion cannot be regarded as varying condition of service. In **Ramchandra Shankar Deodhar v. State of Maharashtra** [(1974) 1 SCC 317], a Constitution Bench had held that a rule which merely affects the chances of promotion does not amount to change in the conditions of service. In **Syed Khalid Rizvi & Ors. V. Union of India & Ors** [(1993) supp. 3 SCC 317] a Bench of three judges following the above ratio, with approval, had held at page 602 para 31, that no employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible in accordance with the law."

36. With regard to the right of an employee for promotion to the next post on the basis of the length of service, Shri O.V.Radhakrishnan referred to *Renu Mullick v. Union of India and another* (1994) 1 SCC 373, wherein it was held that as per Group C posts Recruitment Rules of Central Excise and Land Customs Department, service rendered prior to unilateral transfer at own request also counts for determining the eligibility condition for promotion though such transfer downgrades seniority. Shri Radhakrishnan cited another decision of Apex Court in *Dwijen Chandra Sarkar and Another v. Union of India* 1999 (2) SCC 119 where it was held that in grade promotion seniority has no relevance.

37. On going through the *ratio* of the afore cited cases, it can be seen that right of seniority and promotion are not legally enforceable rights. Though the prospects of being considered for promotion is a right, seniority is only an interest- not a right or a condition of service. The administrative authorities or Govt. has the power to regulate the matters relating to seniority and promotions by rules, policy decisions / administrative decisions. Mere aspirations for promotion/ chances of promotion therefore do not call for protection from court/ Tribunal. As stated above, the only right of the Govt. servant is the right to be considered for promotion. In the case of ICT on the grounds of 'spouse', 'compassionate' or 'physical disability', one can see an interplay of both public interest and private interest each coalescing with the other. Such transfers are to be treated as in the public interest as it reflects the policy of the Govt. manifested through the OMs issued by the DoPT. As observed earlier, the special concessions given to persons with disability is on account of the statutory obligation of the government for bringing such persons to the mainstream of the society and for enabling such persons to live with dignity. In Annexure A/5 to A/7 & A/12 administrative instructions on ICTs,



one can see a fusion of the Constitutional protection of the right to equality and the guiding principles of good governance envisaged in part IV of the Constitution.

38. Viewing from the aforesaid angle, we are of the opinion that protection of seniority given to the employees who are transferred on grounds of 'spouse', 'compassionate' or 'physical disability' is not an arbitrary decision on the part of the administration but is based on the intelligible differentia buttressed by the principles envisaged in Part IV of the Constitution which are fundamental in the governance of the country. It appears that the service rules of the respondent Department do not have specific provisions to deal with the ICTs in the instant cases. Therefore, the administrative instructions in the form of executive orders of DoPT govern the field. Such instructions have the binding force of executive orders under Article 73 of the Constitution.

39. As noted above, instructions in A/5 to A/7 were issued keeping in tune with A/8 and para 3.5 of Annexure A/6 OM of DoPT. We are of the view that Annexure A/12 instruction issued subsequently is a reiteration of Annexure A/5 to A/7 but permitting ICT with loss of seniority on other grounds, without upsetting the instructions contained in Annexure A/5 to A/7. In our view, Annexure A/12 is only clarificatory in nature in the context of a nebulous situation that prevailed in the permissibility of ICT. While stating that ICT is permissible with loss of seniority, Annexure A/12 has not at all disturbed the policy decisions contained in A/5 to A/7.

40. In the light of the above discussion, we are of the opinion that the prayers of the applicants in the OAs captioned above are only to be allowed. We do so. While holding that Annexure A/5 to A/7 and A/12 are applicable only to the Group B, C & D employees belonging to the different commissionerates under the Central Board of Excise and Customs we make it clear that this order will not stand in the way of the DoPT to formulate appropriate comprehensive instructions on inter-cadre transfer that could be made applicable to all departments /formations under the Central Government.



41. Parties shall suffer their costs.

42. Incorporate of a copy each of this order in the files of OA No. 400/2010, OA No. 262/2012, OA No. 505/2011 & OA No. 784/2012.

(Dated, the 10th day of July, 2015)



P. GOPINATH
ADMINISTRATIVE MEMBER



U. SARATHCHANDRAN
JUDICIAL MEMBER

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