A UNION OF INDIA & ORS.

v.

DEO NARAIN & ORS.

(Civil Appeal No. 8017 of 2003)

SEPTEMBER 15, 2008

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[C.K. THAKKER AND LOKESHWAR SINGH PANTA, JJ.]

Service Law – Promotion – From the post of LDC to UDC C *– Non- consideration for – Of the employees transferred from parent department to another on compassionate ground – By not counting their past services in the parent department – Propriety of – Held: Non-consideration of such employees for promotion is not illegal or unlawful – The employees having* D *taken the transfer voluntarily foregoing their past services as a condition therefor as per the existing rules, cannot claim seniority over the employees in the transferee department – Central Excise and Land Customs Department Group C Posts Recruitment Rules, 1979.*

E **Respondents joined their services as Lower Division Clerk (LDC). Later they were transferred from their parent department on voluntarily opting for the same in accordance with the policy of Inter-Collectorate Transfers. Consequently, as per rules, they were placed at the bottom of** F **the seniority list in the new department, losing their seniority in the parent department. In view of their low position in the seniority list, they were not considered for promotion to the post of Upper Division Clerk (UDC). They filed applications before Central Administrative Tribunal** G **aggrieved by their non-consideration and non-promotion. Tribunal allowing their applications directed the authorities to consider the eligible applicants for the promotion, by taking into account their past regular services rendered in the parent department. High Court dismissed the writ**

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petition challenging the order of the Tribunal. Hence the present appeal. A

Allowing the appeal, the Court

HELD: 1.1 As early as in 1980, a policy decision was taken by the appellants that when any LDC working in one Collectorate seeks transfer to another Collectorate on compassionate ground, the said action can only be taken on the terms and conditions of the decision of the Government of India, dated May 20, 1980. In that case, he/she will not be entitled to get his/her service rendered in the former Collectorate to be counted for the purpose of seniority and will be placed at the bottom of the list of employees in the transferred Collectorate. [Paras 20 and 21] [411-B-C; 411-E] B C

1.2 The respondents got themselves transferred to new Collectorate and they had, in consonance with the policy decision of May 20, 1980, foregone their seniority in the Collectorate where they were working and were placed at the bottom of the seniority list of the new Collectorate where they were transferred. Hence, placement of the respondents at the bottom of the seniority list in the transferee Collectorate was legal and valid, is well founded and in consonance with the decision of the Central Government. [Para 22] [411-F-G] D E

1.3 Generally, 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. [Para 34] [416-F-G] F G

1.4 The two concepts, *viz.* (i) *'eligibility'* and (ii) *'seniority'* are quite distinct, different and independent of each H

A 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
B consideration in the light of his position and placement in 'seniority' and the second condition 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. [Para 29] [414-C-F]
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Union of India and Ors. v. C.N. Ponnappan, 1996 (1) SCC 524; *Renu Mullick (Smt) v. Union of India and Anr.*, 1994 (1) SCC 373; *Scientific Advisor to Raksha Mantri and Anr. v. V.M. Joseph*, 1998 (5) SCC 305 – relied on.

D *C.N. Ponnappan v. Union of India*, 1987 (5) ATC 766 (Mad); *K.A. Balasubramaniam v. Union of India*, 1987 (4) ATC 805; *S. Abdul Khayum v. Union of India* 1987 (1) SLJ (CAT) 131 – referred to.

1.5 The High Court was not right in holding that there
E was no bar in considering the cases of the applicants for promotion, on the observation that since the LDCs senior to the applicants but not eligible to be appointed as UDCs were considered, the applicants were also entitled to be considered for promotional post of UDCs. The statu-
F tory rules empower the Central Government to relax the provisions of the Rules. In exercise of the said power under Rule 7 of the Rules, the Central Government relaxed eligibility condition. Such action, therefore, cannot be held illegal or unlawful and could not have been interfered with
G by the Tribunal or by the High Court. [Paras 43 and 44] [420-B; 420-C-D]

1.6 Moreover, the applicants opted for voluntary and unilateral transfer foregoing their seniority and joined the new Collectorate with open eyes and were placed below
H all LDCs who were serving in the said Collectorate. It was,

therefore, not open to them to make grievance if LDCs shown above them in the seniority list are considered for promotion to the cadre of UDC. Thus, neither law nor equity supports the so-called claim of the applicants. [Para 44] [420-D-E]

Case Law Reference

1996 (1) SCC 524	**Relied on.**	**Para 23**
1987 (5) ATC 766	**Referred to.**	**Para 24**
1987 (4) ATC 805	**Referred to.**	**Para 24**
1987 (1) SLJ (CAT) 131	**Referred to.**	**Para 25**
1994 (1) SCC 373	**Relied on.**	**Para 29**
1998 (5) SCC 305	**Relied on.**	**Para 35**

CIVIL APPELLATE JURISDCTION : Civil Appeal No. 8017 of 2003

From the Final Judgment and Order dated 30.1.2002 of the High Court of Delhi at New Delhi in C.W.P. No. 6281/1999

Nagendra Rai, Ansul, Alka Sharma, Sushil Kumar, Vandana Mishra and B. Krishna Prasad for the Appellants.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeal is filed by the Union of India & Ors. against the judgment and order passed by the High Court of Delhi on January 30, 2002 in Civil Writ Petition No. 6281 of 1999. By the said judgment, the High Court confirmed the judgment and order dated April 30, 1999 passed by the Central Administrative Tribunal, Delhi ('CAT' for short) in Original Application No. 2146 of 1998.

2. To appreciate the issue raised in the present appeal, few relevant facts may be noted.

3. The respondents herein (applicants before CAT) filed Original Application against the action of the Central Excise and Customs Department of not considering their cases for

promotion to the post of Upper Division Clerk ('UDC' for short) from the post of Lower Division Clerk ('LDC' for short). According to the applicants, they joined service in the Office of Central Board of Excise and Customs, Department of Revenue as LDCs. Applicant No.1 Deo Narain joined as LDC on June 11, 1962 (*sic* 1982). Applicant No. 2 Bijender Singh joined on September 9, 1986. Applicant No. 3-Nandan Singh joined on May 5, 1988 whereas applicant No.4-Ram Kishan joined on March 17, 1987. In accordance with the policy of Inter-Collectorate Transfers, they got themselves transferred to Meerut Collectorate. Consequent upon their transfer, they lost their seniority which they were having in the parent Department *i.e.* the Department where they were serving. They were placed at the bottom of the seniority list in the new Department at Meerut under the relevant rules and policy decisions. In view of their relatively lower position in the combined seniority list of LDCs, the applicants and other similarly placed LDCs in the seniority list, did not come within the zone of consideration for promotion to the post of Upper Division Clerk (UDC) in the year 1997-98. Hence, when the Departmental Promotion Committee (DPC) met for consideration of cases for promotion of LDCs as UDCs, in the light of position of the applicants in the combined seniority list, they were not included in the zone of consideration. Their cases, therefore, were not considered.

4. The applicants, hence, approached the CAT by filing Original Application challenging the action of their non-consideration and non-promotion from the post of LDC to the post of UDC on the ground of their placement in the seniority list. They contended that they had completed requisite service as LDC and their cases, therefore, ought to have been considered by DPC. Non consideration of their service on the basis of their position in combined seniority list was illegal, arbitrary and irrational. A relief was, therefore, sought to direct the authorities to consider the cases of the applicants for promotion to the post of UDC from the post of LDC.

5. The CAT, vide its order dated April 13, 1999 allowed

the application, directed the authorities to convene DPC for the year 1997 and consider the cases of the applicants as eligible LDCs for promotion to the post of UDC in accordance with law by taking into account their past regular service rendered as LDCs before their transfer to Commissionerate, Meerut. It also directed to take such action within a period of three months from the date of receipt of the copy of the order. A B

6. The appellants herein, being aggrieved by the said order, approached the High Court by filing a writ petition which as stated above, came to be dismissed by the High Court holding that there was no 'merit' in the petition and the order passed and direction issued by the CAT could not be said to be illegal or contrary to law. C

7. The above orders are challenged by the authorities in the present appeal. D

8. On May 6, 2003, the Special Leave Petition was placed for admission hearing. Notice was issued. On September 22, 2003, delay was condoned and leave was granted. By an order passed by a Bench headed by the Hon'ble the Chief Justice of India, the appeal was ordered to be placed for final hearing in summer vacation and that is how the matter has been placed before us. E

9. We have heard learned counsel for the parties.

10. The learned counsel for the appellants strenuously contended that the CAT as also the High Court committed an error of law in allowing the claim of the applicants and in directing the authorities to consider their cases for promotion to the post of UDC from the post of LDC. According to the counsel, when the applicants were transferred to another Collectorate, they had foregone their seniority. It was in accordance with the Instructions issued by the Government of India. It was expressly stated that in the new Collectorate, where they were transferred, they would be placed at the bottom of the seniority list below all LDCs who were working at that time. With open eyes, the ap- F G H

A plicants accepted the said condition and joined the new Collectorate at Meerut. It was thereafter not open to the applicants to challenge the said action. Again, there was gross delay and laches on the part of applicants in challenging such action. They were transferred in 1992. The Departmental Promo-
B tion Committee (DPC) considered the cases of LDCs for promotion as UDCs in 1997. Till then, applicants did not take any action. They filed Original Application in September, 1998. Therefore, even on the ground of delay, the CAT ought not to have entertained the application and ought to have dismissed it.

C 11. According to the counsel, even on merits, the applicants had no case. According to the counsel, what weighed with the CAT as also the High Court was that in accordance with law, past services of applicants could not be ignored. The counsel submitted that, to that extent, the applicants were right
D and the CAT and the High Court had not committed any mistake in treating applicants as eligible and qualified for consideration to the post of UDC from the post of LDC. According to the counsel, however, the CAT and the High Court went wrong in equating *eligibility* with *seniority*. Two things, namely, (i) eli-
E gibility, and (ii) seniority are quite different and distinct. Even if an employee is eligible and qualified, it does not necessarily mean that his case must be considered irrespective of his position in the seniority list. Fixation or retention of seniority depends upon the provisions of the Act, Rules or Administrative
F Instructions in force. In the case on hand, it was provided that on transfer from one Collectorate to another Collectorate, such transferee employees would retain their requisite service as experience for the purpose of consideration of eligibility and qualification. But it was specifically stated that in the new Di-
G rectorate, they will be placed at the bottom and below all existing LDCs. The counsel stated that for considering cases of eligible LDCs as UDCs, there is a zone of consideration and keeping in view lower position of applicants who were transferees, they did not come within the said zone and hence their cases could not be considered. The said action was, according to the
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counsel, perfectly legal and wholly justified and the CAT and the High Court were wrong in granting relief to the applicants. The order passed by the CAT and confirmed by the High Court, therefore, deserves to be set aside.

12. The learned counsel for the contesting respondents, on the other hand, supported the order passed by the CAT and confirmed by the High Court. It was submitted that once it is said that the transferee LDCs would not lose their past service, necessary corollary would be that they would be treated as appointed as LDCs the date they joined service and thereafter it was not open to the authorities to ignore their claim on the ground that their placement was at the bottom of the seniority list of the Collectorate where they were transferred and placed below other LDCs since they had foregone their seniority. Such an action, according to the counsel, is arbitrary, irrational, discriminatory and violative under Articles 14 and 16 of the Constitution. It is also unreasonable and infringing Article 19 of the Constitution. The counsel also submitted that when the applicants were otherwise eligible and qualified, no power of relaxation of eligibility could have been exercised by the Government in favour of ineligible LDCs. The CAT and the High Court were, therefore, justified in granting the relief and no interference is called for in exercise of discretionary jurisdiction under Article 136 of the Constitution. A prayer is, therefore, made to dismiss the appeal.

13. Having given our anxious consideration to the rival contentions of the parties, in our opinion, the appeal deserves to be allowed.

14. In exercise of powers conferred under the proviso to Article 309 of the Constitution, the President of India framed rules regulating the method of recruitment to Group C posts in the Central Excise and Land Customs Department known as "the Central Excise and Land Customs Department Group C Posts Recruitment Rules, 1979". Procedure of recruitment, age limit, qualifications, relaxation, etc. have also been laid down in the Rules. Appointment as Upper Division Clerk (UDC) is to be

A made, *inter alia,* on promotion from the post of Lower Division Clerk (LDC) with seven years experience.

15. Note' to the Rules reads as under:

"If a junior person is considered for promotion on the basis
B of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation".
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16. The Rules also provide for Departmental Promotion Committee (DPC) and consideration of cases of eligible candidates.

17. By a communication dated May 20, 1980, the Government of India, Central Board of Excise and Customs informed all
D Collectors of Central Excise for consideration of cases of transferee employees. It was stated that transfer of all Group 'C' officers from one Collectorate to another Collectorate having separate cadres were allowed on compassionate ground with the approval of the Commissioner subject to certain conditions. It
E was then stated that requests received for inter-Collectorate transfers from Group 'C' officers on genuine compassionate grounds can be considered on merits. It was also expressly provided that such transfers wherever considered necessary, should be effected on the conditions laid down in the said letter.

F 18. Condition (ii) which is relevant for the purpose of present controversy, reads as under:

(ii) *The transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge.* In other
G words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge.

(emphasis supplied)

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19. In para 3 it was stated; A

"A written undertaking to abide by the requisite terms and conditions may be obtained from the employees seeking transfers before the transfers are actually effected".

20. It is thus clear that as early as in 1980, a policy decision B was taken by the appellants that in certain circumstances, LDCs could be transferred from one Collectorate to another Collectorate purely on compassionate grounds. But, it was also provided that such transferee would not be entitled to count the service rendered by him/her in the former Collectorate for the purpose of C *seniority* in the new Collectorate. In other words, such transferee would be treated as *new entrant* in the Collectorate in which he/she is transferred and will be placed *at the bottom* of the list of temporary employees of the cadre in the new charge.

21. From the above policy decision, it is abundantly clear D and there is no doubt whatsoever that when any LDC working in one Collectorate seeks transfer to another Collectorate on compassionate ground, the said action can only be taken on the terms and conditions of the decision of the Government of India, dated May 20, 1980. In that case, he/she will not be en- E titled to get his/her service rendered in the former Collectorate to be counted for the purpose of seniority and will be placed at the bottom of the list of employees in the transferred Collectorate.

22. It is an admitted fact that in 1992, the applicants got themselves transferred to Meerut and they had, in consonance with the F policy decision of May 20, 1980, foregone their seniority in the Collectorate where they were working and were placed at the bottom of the seniority list of the Meerut Collectorate where they were transferred. In view of the above fact and legal position, in our opinion, the contention of the appellants that placement of the respon- G dents at the bottom of the seniority list in the transferee Collectorate was legal and valid is well founded and in consonance with the decision of the Central Government. There was no infirmity in the said order and it ought not to have been disturbed.

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A 23. The CAT, however, allowed the Original Application relying upon a decision of this Court in *Union of India & Ors. v. C.N. Ponnappan,* (1996) 1 SCC 524. In *Ponnappan,* the question before this Court was whether an employee who was transferred from one Unit to another Unit on compassionate ground B and as a result thereof has been placed at the bottom of the seniority list, could have his service in the earlier Unit from where he had been transferred, counted as experience for the purpose of promotion in the Unit where he was transferred.

24. This Court noted that there was cleavage of opinion C amongst Benches of Central Administrative Tribunal (CAT) on the question. Whereas, the Madras Bench in *C.N. Ponnappan v. Union of India,* (1987) 5 ATC 766 (Mad) had taken the view that though on transfer on compassionate grounds, the employee would lose his seniority and would be placed at the bottom of the seniority list D at the transferred place, for the purpose of promotion, his earlier service in the Unit from where he was transferred, would not be wiped out and the said service would be treated as 'experience' for eligibility for promotion and if he is found eligible. then his case for promotion has to be considered on the basis of seniority 'at the E transferred place'. [See also *K.A. Balasubramaniam v. Union of India,* (1987) 4 ATC 805 (Mad) (FB)].

25. The Bangalore Bench of the CAT, on the other hand, in *S. Abdul Khayum v. Union of India,* (1987) 1 SLJ (CAT) 131 (Bang) did not agree with the above view of Madras Bench and F held that an employee who was transferred on compassionate ground and was placed at the bottom of the seniority list at the place where he was transferred, could not have his earlier service at the place from where he was transferred, counted as 'experience' for the purpose of eligibility for promotion.

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26. This Court considered conflicting views and held that the service rendered by an employee at one place could not be ignored or not counted for the purpose of promotion to another Unit even if such transfer is made on compassionate ground. He can be placed at the bottom of the seniority at the trans- H

ferred place, but the experience obtained by him of rendering service in the first Department could not be ignored and must be considered as experience for promotion in the new Unit also.

27. In para 4, the Court stated;

> "4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that *the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred*".
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> (emphasis supplied)

28. We are unable to understand how the CAT read this judgment as giving benefit of seniority to the transferred employee in the transferee Department over the employees who were very much there. In our considered opinion, the direction in the judgment is abundantly clear which draws distinction between *'experience'* on the one hand and *'seniority'* on the other hand. What was held in *Ponnappan* 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

A 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* B when his case comes up for consideration for further promotion.

29. 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 C 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 D 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 E 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 F doubt in our mind that it says to the contrary.

30. 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 G 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 H as a fresh entrant in the cadre of UDC", at Allahabad.

31. 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.

32. 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.

33. The Court stated;

"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

A 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
B 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
C 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 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
D 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
E 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".

F 34. 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
G 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.

35. Finally, in *Scientific Advisor to Raksha Mantri & Anr. v. V.M. Joseph,* (1998) 5 SCC 305, again, a similar view has
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been taken by this Court. It was held that if the eligibility condition requires certain length of service, service rendered in another organization before unilateral transfer at own request cannot be counted for the purpose of *seniority.* But it must be counted for determining *eligibility* for promotion.

36. Referring to and relying on *Ponnappan,* this Court stated;

> "From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store Keeper on the ground that he had completed three years of regular service as Store keeper on 7th June, 1980 and therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper at Cochin and was placed at the bottom of the Seniority list, the period of three years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than three years of service as a Store Keeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. *Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors*".
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> (emphasis supplied)

37. The CAT in para 4 of the judgment, observed as under;

"4. The respondents in their reply have submitted that the applicants have been transferred from other departments to the Central Excise, Commissionerate, Meerut on Inter Department transfer basis in 1992. They have relied on their Ministry's instructions dated 20.5.1980 and have submitted that the applicants have lost their seniority in the parent department in the grade of their inter departmental transfer from other Commissionerates to the Central Excise, Commissionerate, Meerut and have been placed at the bottom of the seniority list of the LDCs of Combined Central Excise Commissionerate, Kanpur/ Allahabad/Meerut. They have stated that the applicants have worked as LDCs between four to eight years prior to joining in Meerut Commissionerate. As they are placed at bottom in the Seniority list of LDCs they have submitted that the applicants have no claim over and above the officials senior to them and they will be duly considered as and when their turn comes for promotion as per their seniority in the combined cadre of Allahabad/Kanpur/ Meerut Commissionerate".

38. The CAT then concluded;

"In the result, this application is allowed with the directions to the respondents to convene review DPC for the year 1997, and consider the eligible LDCs for promotion to the post of UDCs in accordance with the principles laid down by the Supreme Court by taking into consideration the period of their past regular service rendered as LDCs before their transfer to another Commissionerate. In the circumstances, any relaxation of the Rules to consider the senior persons who do not have the eligibility conditions of seven years as laid down in the relevant recruitment Rules cannot be resorted to by the respondents when there are sufficient number of other persons who may be

junior but, however, fulfill the eligibility conditions prescribed in the Rules. This action shall be taken within three months from the date of receipt of a copy of this order. No order as to costs".

39. As already discussed hereinabove, in our opinion, the CAT was not right in allowing the application and issuing directions to the Department.

40. When the appellants herein approached the High Court, the High Court observed;

> "The fact of the matter is not in dispute. In the year 1992, the respondents joined the offices of the petitioners as lower division clerks on different dates in 1992 on inter-departmental transfers. Admittedly, in terms of the existent rules, consequent upon their transfer, they had foregone their respective seniority in their departments and they were placed at the bottom of the seniority list. On or about 23rd May 1997, the Ministry of Finance, Department of Revenue issued instructions to all Commissionrates under the Central Board of Excise and Customs that an officer on transfer form one Commissionerate to another would be entitled to get the benefit of his past service for the purpose of promotion *although his seniority shall be retained at the bottom of the transferred Commissionerate*".
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> (emphasis supplied)

41. Referring to *Renu Mullick,* the High Court observed that "it is not in dispute that the persons on voluntary transfer, would lose their seniority but the same by itself would not mean that their entire past service is wiped off. For the purpose of consideration of their cases for promotion, their past service is required to be taken into consideration".

42. We are in agreement with the High Court. *Renu Mullick* and other cases referred to by us, clearly lay down the above proposition of law that even if the transfer is voluntary and uni-

A lateral, services rendered by an employee would not be wiped off for considering eligibility for promotion to the higher cadre.

43. The High Court then proceeded to observe that there was no bar in considering the cases of the applicants for promotion. The Court observed that though there were LDCs who
B were senior to the applicants but they were not eligible to be appointed as UDCs and hence, the applicants were entitled to be considered for promotional post of UDCs.

44. In our considered opinion, there the High Court was
C not right. The statutory rules referred to above, empower the Central Government to relax the provisions of the Rules. In exercise of the said power under Rule 7 of the Rules, the Central Government relaxed eligibility condition. Such action, therefore, cannot be held illegal or unlawful and could not have been interfered with by the CAT or by the High Court. Moreover, the
D applicants opted for voluntary and unilateral transfer foregoing their seniority and joined Meerut Collectorate with open eyes and were placed below all LDCs who were serving in the said Collectorate. It was, therefore, not open to them to make grievance if LDCs shown above them in the seniority list are
E considered for promotion to the cadre of UDC. Thus, neither law nor equity supports the so-called claim of the applicants.

45. For the foregoing reasons, the appeal is allowed. The order passed by the CAT on April 13, 1999 in O.A. No. 2146 of
F 1998 titled *Deo Narain & Ors. v. Union of India & Ors.* and confirmed by the High Court on January 30, 2002 in C.W.P. No. 6281 of 1999 titled *Union of India v. Deo Narain & Ors.* is set aside and the original application filed by the applicants-respondents herein is ordered to be dismissed.

G 46. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

47. Ordered accordingly.

K.K.T. Appeal allowed.

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