

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00314/2019

HYDERABAD, this the 20th day of January, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



1. T. Anantha Raju S/o T. Pushpa Raju,
aged 31 years,
Occ : Junior Accounts Assistant, Gr.'C',
O/o The Senior Divisional Financial Manager,
South Central Railway, Nanded Division,
Nanded, Maharastra State.

2. J. Ramakrishna S/o J. Krishna Murthy,
aged 32 years
Occ : Junior Accounts Assistant (Group 'C'),
O/o The Senior Divisional Financial Manager,
South Central Railway, Nanded Division,
Nanded, Maharastra State.

...Applicants

(By Advocate : Mr. KRKV Prasad)

Vs.

1. Union of India Rep by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

2. The Principal Financial Advisor,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Senior Divisional Financial Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

4. The Senior Divisional Financial Manager,
South Central Railway, Nanded Division,
Nanded.

....Respondents

(By Advocate : Mr. S. M. Patnaik, SC for Rlys)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed in regard to transfer of the applicants from Nanded to Secunderabad unit in the Accounts Cadre.

3. Brief facts of the case are that the applicants were selected by RRB against notification No.03/2012 as Junior Accounts Assistants (JAA) and they claim that they have been appointed in the Secunderabad Division of the respondents organization vide appointment letter dated 6.5.2014. Respondents posted the applicants to Nanded Division on 13.6.2014 and were shown in the seniority list of Secunderabad Division, by maintaining a combined seniority list for the Divisions of Secunderabad, Nanded, Hyderabad and Lallaguda Workshop. Later, respondents took a policy initiative on 29.9.2015 for making Nanded an independent seniority unit with an option to opt for Nanded or Secunderabad Division with protected seniority. Applicant opted for Secunderabad unit, but it was rejected citing clause (a) of the letter dated 29.9.2015. Aggrieved, the OA is filed.

4. The contentions of the applicants are that the Staff Union has taken up the issue in the Permanent Negotiation Machinery (PNM) and the issue is pending for a decision. Though the applicants were promoted as Accounts Assistants on 21.7.2017, they have not joined since they would like to join Secunderabad unit and thereafter, seek inter se seniority. Applicants represented and met the FA& CAO, who has advised them to seek inter-divisional transfer. Sri I.S.V. Surya Prakash, who is junior to the

applicants was transferred to Secunderabad in 2015 and not the applicants. 5 RRB wait list recruitees and less meritorious were posted to Zonal Headquarters instead of transferring the applicants to Secunderabad unit. Applicants belong to Anantapur/Cuddapah Districts of the State of A.P. and as per rules, being SC/ST employees, they are to be considered to be posted to Secunderabad, which is nearer to their home towns than Nanded. The posting to Nanded is temporary and continuing them in Nanded is against policy dated 29.9.2015 and the Railway Board instructions issued over the years in regard to transfer of SC/ST employees. Two Accounts Clerks appointed on compassionate grounds are likely to join Secunderabad division shortly. The nature of job of the Accounts Clerks, Junior Assistant Accounts, Accounts Assistants are similar and postings in these posts are interchangeable. Group 'D' employees promoted as Accounts Clerks have been posted to Secunderabad division on 22.3.2019 but not the applicants, who have been waiting over the years for posting in Secunderabad. Applicants are suffering mentally and physically for being denied the transfer and that such a decision is malice in law as well as violation of the Articles 14, 16 & 21 of the Constitution.



5. Respondents, *per contra*, state that the applicants were recruited by RRB as Junior Accounts Assistants and they were temporarily appointed and posted to Nanded Division indicating their seniority in the combined seniority list maintained by the Secunderabad Unit. On 29.9.2015, a decision was taken to maintain independent seniority lists for Nanded, Hyderabad, Secunderabad and Lallaguda Workshop respectively. Accordingly, seniority of the applicants was shown under Nanded Division

and they are not eligible for transfer to Secunderabad unit as per clause (a) of the letter dated 29.9.2015. Applicants represented for Secunderabad unit and also the matter has been taken up in the PNM meeting by the Staff Unions. Applicants were replied to await a decision in the PNM meeting and also advised to apply for inter-zonal transfer on meeting the FA & CAO. Though applicants were promoted as Accounts Assistants on 21.7.2017 they did not join the promoted post awaiting a resolution to the disputed issue. Other contentions of the applicants were appropriately responded to.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the transfer of the applicants to Secunderabad unit from Nanded in the Accounts cadre. The claim of the applicants is that they have been appointed and posted temporarily to Nanded unit when it was a part of the Secunderabad unit for the JAA cadre. The contention was supported by the averment of the Ld. Counsel for the applicants stating that the appointment order was issued by the Secunderabad unit and therefore, applicants belong to Secunderabad Division and their posting to Nanded is only on a temporary basis. We do not agree with these contentions, because the applicants were temporarily appointed and posted to Nanded. The appointment is temporary and not the posting. Further, Secunderabad division was maintaining the combined seniority list in the said cadre for Nanded, Hyderabad, Secunderabad and Lallaguda Workshop. Therefore, it is the Secunderabad unit which has to issue the appointing order and maintain the combined seniority list showing the lien of the applicant in the said combined unit. However, on 29.9.2015

respondents took a policy decision to maintain independent seniority lists for the Divisions cited supra with the following conditions:

“(a) The directly recruited JAAs and Compassionate appointees directly posted to NED would be allotted to NED seniority unit without option and will be considered for promotion in the vacancies available in NED Division.



“(b) The employees who have been promoted and posted from SC area either from Headquarters or from SC seniority unit to NED Division will be given option either to choose to remain in NED seniority unit or opt for SC seniority unit.”

The applicants were appointed and posted to Nanded as per their appointment letter dated 6.5.2014. The relevant paras are extracted hereunder:

“9. Your appointment will be purely temporary for the present and only if your work is satisfactory, you will be continued in service during the currency of the post. If not found fit, your service will be terminated on one month notice in writing. Though your initial posting and subsequent promotion will normally be at any station on this Railway, you are liable in exigencies of service to be transferred anywhere on SC Railway.

10. xxx

11. If the terms and conditions set forth above are acceptable, you should report to this office on any working day between 09.15 hrs to 17.45 hours on or before 05.06.2014. If you fail to report within the prescribed date, it will be presumed that you are not desirous of taking up an appointment on this railway and the offer of appointment will be treated as withdrawn. No correspondence on this issue or any other terms and conditions of appointment will be entertained.”

The appointment letter makes it explicit that the applicants were appointed as JAA and posted to Nanded. It is true that their lien was shown in Secunderabad unit when combined seniority list was maintained. However, with the advent of policy change in regard to separately maintaining seniority unit wise, applicants having been appointed and posted to Nanded, they were not eligible to opt for Secunderabad unit, under clause (a) of the letter dated 29.9.2015 and their seniority has to be maintained at Nanded.

Moreover in policy matters, the Tribunal has minimal scope to intervene, as per the Hon'ble Uttarakhand High Court observations in **Prakash Chandra vs State Of Uttarakhand And Others** on 10 October, 2019 in Writ Petition (S/B) No. 467 of 2019.



II. In respect of Sri I.S.V.Surya Narayana, it is seen that he was promoted as JAA from Accounts Clerk and posted to Nanded, whereas applicants were directly posted to Nanded on appointment. Therefore, Sri I.S.V. Surya Narayana is eligible for re-posting to Secunderabad unit as per clause (b) of the letter dated 29.9.2015 cited supra. Applicants belong to the SC/ST community and they are to be posted to places nearer to their home towns as far as possible, as per the Railway Board letter dated No.78E(SCT)15/25 dt.6.7.1978 and the other letters of the Railway Board referred to by the applicants. Practically, to run the administration, which is also crucial, the phrase, 'as far as possible' has been used and did not make the posting of SC/ST officials nearer to the home town mandatory. Further, in respect of the transfer of the two officials appointed on compassionate appointment and posted to Nanded, their request for transfer is being processed on inter divisional basis by the respondents. The applicants were also advised by the respondents to opt for inter divisional transfer which they would consider, but the applicants did not take the offer. Group D employees cited by the applicant were selected as Accounts Clerk for Secunderabad/Headquarter vacancies in March 2019 and they were posted in the said units, whereas due to the policy change applicants belong to Nanded division. Posting depends on the vacancies and therefore, the 5 RRB wait-listed candidates referred to were posted wherever the vacancies

were available. Posting is not based on merit in RRB but depends on the vacancies available at the relevant point of time. Hence, contention of the applicants that they have been discriminated, is not true in view of the above elaboration. Further, the applicants have not rebutted the replies given by the respondents for the various contentions made by them, by filing a rejoinder.



III. Although the policy decision vide Memorandum dt. 29.9.2015 was taken by the office of the FA & CAO, Secunderabad, in consultation with the Staff Unions, yet the matter has been taken up in the PNM meeting and the said item is not yet closed as submitted by the Ld. Counsel for the applicants. Therefore, since a final decision about the pendency of the PNM item in regard to the issue on hand has to be taken, it would be in the fitness of things to direct the General Manager, South Central Railway, who is reported to be the Chairman of the PNM, to examine the issue as per rules and law and take a decision in regard to the PNM item related to the issue in dispute, within a period of 3 months from the date of receipt of this order.

IV. With the above directions, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr