

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/882/2020 & MA/021/199/2021

HYDERABAD, this the 1st day of March, 2021



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

Sri K. Bala Subrahmanyam,
S/o. Dr. K.R.G.K. Murthy,
Aged 50 years, Gr. A,
Occ: IRAS Officer, Address: 205,
Tranquil Towers, Whitefields, Kondapur,
RR Districts, Hyderabad – 500 084.

...Applicant

(By Advocate : S. Rahul Reddy)

Vs.

1. Union of India rep. through its
Secretary, Ministry of Railways, New Delhi.
2. The Railway Board rep. by its
Chairman and Chief Executive Officer,
Ministry of Railways, New Delhi.
3. The Member Finance,
Ministry of Railways, New Delhi.
4. The General Manager,
South Central Railways, Secunderabad.
5. Principal Financial Advisor,
South Central Railways, Secunderabad.
6. Principal Financial Advisor,
Western Railway, Mumbai, Maharashtra.

....Respondents

(By Advocate: Sri Suryakaran Reddy, learned Addl. Solicitor General for
Sri N. Srinatha Rao, SC for Rlys.)

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

2. The OA is filed being aggrieved by the transfer of the applicant from the ADRM/SC to Western Railway vide impugned order dt. 11.12.2020 and also rejection of his representation vide order dt. 17.12.2020.



3. Brief facts of the case are that the applicant belongs to the 1996 batch of Indian Railway Accounts Service (for short "IRAS"). He worked in different places. On elevation to the Senior Administrative Grade (for short "SAG"), he was posted as Additional Divisional Railway Manager, Secunderabad, General, Secunderabad Division (ADRM/G/SC) on 08.11.2017. When his tenure was nearing completion, applicant represented on 03.06.2020 to retain him at Secunderabad on grounds of ill-health of his wife and son's education. The respondents have posted Sri B. Ravichander, SAG/IRTS in his place on 25.08.2020 and the said officer took charge on 05.10.2020. The applicant has been transferred to Western Railway on 11.12.2020. In view of the fact that his son is studying 10th standard and his wife's health being precarious, applicant represented on 14.12.2020 to reconsider posting him at Indian Railway Institute of Financial Management (for short "IRIFM") where there is one vacancy in the SAG cadre. The request of the applicant was turned down on 17.12.2020. Aggrieved over the same, the OA has been filed.

4. The contentions of the applicant are that his wife is suffering from brain tumor and his son is studying X class. He has not completed 15 years

of cumulative service as per transfer policy laid down by the Railway Board letter dt. 31.08.2015 and the addendum issued on 12.12.2018. The applicant also contends that two other officers in the Accounts Cadre namely Sri D. K. Ramaiah & Sri N. Srinivasa Raju have been accommodated in the South Central Railway for more than 20 years whereas the applicant, though junior, is being shifted. The applicant raised the issue of retaining Mr. Koram Kishore on the orders of this Tribunal. The other officers who have completed more than 15 years in South Central Railway are continuing to work in the same Zone is one another contention of the applicant.

On 29.12.2020, this Tribunal stayed the transfer of the applicant with a direction to the respondents to adjust him in some other post, if his post is already filled up.

5. The respondents in the reply statement contended that the applicant's cumulative stay in South Central Railway is 18 years 4 months and his posting at Secunderabad has been around 13 years 8 months. Due to acute shortage of Sr. Administrative Grade officers in Western Railway, the applicant was posted to Mumbai where there are good medical facilities and educational institutions to take care of the requirements of the applicant. Though the respondents had choice of posting the applicant at Bilaspur, Gorakhpur, Allahabad, Guwahati, Hubli and Kolkata, considering his wife's ill-health and son's education, he has been accommodated at Mumbai. Western Railway is an important Zone and the Accounts cadre posts are critical which have to be manned necessarily. Therefore, they need to post the applicant in the administrative interest at Mumbai. The



applicant has been working in Secunderabad in ex-cadre post. He has completed his tenure and therefore, he has to be given posting in his cadre. In regard to the IRIFM, there is a vacancy in SAG cadre, but the work being too less, there is no necessity to post an SAG cadre officer. In contrast, SAG officers are required in Western Railway in public interest. The applicant has not submitted any medical certificates to establish her medical condition. He has only submitted pathological reports.

The applicant filed a rejoinder stating that 11 officers have been transferred and that the respondents have admitted that there is one vacancy in IRIFM. The applicant also spoke about re-distribution of posts in SAG cadre and HAG cadre among different zones. The point raised by the applicant in regard to the two officers spending more than 20 years has not been answered in the reply statement. The respondents have also not furnished a list of officers who have completed more than 15 years in South Central Railway. The respondents are allowing officers to work in SC Railway beyond the sanctioned strength. The respondents did not ask for medical certificates and therefore, they did not apply their mind while transferring the applicant to Mumbai.

The respondents have filed MA No. 199/2021 for vacating the interim order passed by this Tribunal on 29.12.2020 and we have gone through the same.

Respondents have also filed additional reply answering the averments made by the applicant in his rejoinder. They have given the details of the officers who have been posted from different zones and

transfer of posts between different zones as well the need and necessity to post the applicant at Mumbai. We have gone through them in detail.

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



7(I) The issue is about the transfer of the applicant from South Central Railway, Secunderabad to Western Railway, Mumabi. The applicant has sought retention at Secunderabad on grounds of ill-health of his wife who is stated to be suffering from brain tumor and his son's education who is studying X Class. The respondents claim that the applicant has not submitted any medical certificate/report confirming the medical status of his wife. The respondents, in regard to the two officers Sri D.K. Ramaiah and Srinivasa Raju referred to by the applicant, have stated that they were posted in SC Railway prior to the applicant's posting. However, we are not persuaded by the said explanation, since the yardstick to be followed is the number of years spent and not when they were posted. There is a vacancy at IRIFM, as admitted by the respondents. However, the respondents state that there is hardly any work to post a Senior officer in the grade of SAG in the said post.

II. While accepting the said contention of the respondents, we also have to state that in para 4 of the policy guidelines dt. 12.12.2018, it is stated that the officers on account of critical/ terminal illness of dependents which requires stay at a station in order to have continuity of treatment, can be considered for retention. The applicant's wife is suffering from brain tumor, which is reported to be critical illness. Learned counsel for the applicant has also stated that the applicant's wife is in critical stage and at

this juncture, transferring the applicant would further deteriorate the health of the applicant's wife. The respondents contention is that there are medical facilities at Mumbai, which are as good as those in Hyderabad. Generally, it is for the patient to choose a Doctor and the Hospital. It would not be fair for the respondents to say that there are medical facilities at Mumbai and hence, he can move. Slightly harsh to say so and there is an old adage that confidence in a doctor is half battle won. Hon'ble Supreme Court in a series of judgment observed that the employee or his dependent should be allowed to choose a hospital and his doctor, since the motive is to recover.

III. One another aspect is about the education of the son of the applicant who is studying in X class. The respondents have contended that as per the policy guidelines, only when the officer's children are studying in XI & XII standard, there is a possibility to grant retention. We do not expect the respondents to deviate from the policy guidelines. However, at the same time, when there is a guideline to provide for retention of officer in case any of his family member is suffering from critical/ terminal illness, the same need to be explored from a humane angle. The applicant is expected to submit medical reports, which clarify the decease his wife is suffering from. He cannot expect the respondent to call for each and every detail from him. It is the responsibility of the applicant to produce all the records vis-à-vis medical condition of his wife when he is claiming retention on that ground.

IV. Nevertheless, since the respondents have pointed out that medical reports have not been submitted, the applicant is directed to submit a representation once again to the respondents along with the supporting

documentary evidence i.e. medical reports from the doctor who is treating her describing the health condition of his wife, within a period of one week from the date of receipt of this order. On receipt of the representation, along with the medical reports, the Railway Board, the competent authority, is directed to get the medical reports examined by its own medical board, if required and consider the representation of the applicant for retention keeping in view the transfer guidelines and in accordance with law. The Railway Board is granted 8 weeks time to take a decision in the matter from the date of receipt of the representation from the applicant. Till the representation is disposed of, the applicant shall be allowed to continue at Secunderabad.

With the above direction, the OA is disposed, with no order as to costs. Accordingly, MA No. 199/2021 stands disposed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/