

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 828 of 2018 & MA 809/2018

Reserved on: 07.02.2019

Pronounced on: 26.04.2019

Between:

P. Narayana, S/o. Appanna, aged 48 years,
Occ: Senior Section Engineer/PSI/ Vatlu (Group C),
O/o. The Senior Section Engineer (Power Supply Installation),
South Central Railway, Vijayawada division,
Railway Traction Sub-Station (132 KV/ 25 KV),
Vatlur, West Godavari Dt., Andhra Pradesh.

... Applicant

And

1. Union of India, Rep. by
The Chairman, Ministry of Railways,
Rail Bhavan, Railway Board, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The General Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar.
4. The Principal Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
5. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.
6. The Senior Divisional Personnel Officer,
East Coast Railway, Waltair Division,
Visakhapatnam.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

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

2. The OA is filed for rejecting Inter-Railway mutual transfer.
3. Applicant, an ST employee, working for the respondents organisation in the grade of Senior Section Engineer, has applied for inter-railway transfer from Vijayawada division of South Central Railway zone to Vizianagaram division with Mr A. Srinivas, an OBC employee of the same cadre working under East Coast Railway. The request was rejected since mutual transfer is permissible between the same community employees. Aggrieved over the same, the OA has been filed.
4. Applicant contends that he belongs to ST community and hence has to be accommodated at a place close to his home town as per Railway Board order 336/1985 dated 24.12.1985. Moreover, his application was rejected by an incompetent authority. The post he holds has direct recruitment element in it. Having reached the grade in the supervisory cadre there is no scope for further promotion and hence he would not pursue any promotion by claiming reservation as an ST employee. The Railway Board letter dated 14.8.2007 and 22.10.2007 are not applicable to his case as he is not willing to seek any further benefits on grounds of reservation. The East Coast Railway has approved the transfer and that the South Central Railway taking a different stand is despicable.
5. Respondents, per contra, state that mutual transfer is permissible between same communities as per Railway Board orders dated 14.8.2007 in order to bring about a balance in the post based rosters. The transfer is between posts in the promotional quota. Applicant has opportunity to be further promoted. Provision to post reserved community employees near to home towns is applicable for transfers effected by the respondents and not for request transfers. As the request

of the applicant could not be conceded as per rules, no purpose would be served by sending the same to the zonal authorities. Applicant has filed the OA without exhausting alternative remedies.

6. Heard both the counsel and perused relevant documents/ material papers.
7. I) Applicant, an ST employee from South Central Railway has sought inter-railway transfer with an OBC employee of East Coast Railway. As the community of the two employees are different mutual transfer is impermissible as per Railway Board order 107/2007, which is reproduced as under:

“In the light of the above, Ministry of Railways have decided that in order to maintain the balance in the post-based rosters with reference to reservations prescribed for SC and ST staff and to avoid hardship to staff in the feeder grade in the matter of their promotion, transfers on mutual exchange basis should be allowed between employees belonging to the same category (i.e. General with General, SC with SC and ST with ST). However, transfers on bottom seniority in recruitment grades need not be restricted with reference to points in the post based rosters. The procedure being followed generally in this regard to adjust shortfall/excess in future may continue. But such transfers should be allowed only repeat only against vacant direct recruitment quota posts and not against promotion quota posts. The above instructions do not in any way alter the existing procedure as laid down by this Ministry regarding operation/maintenance of post-based rosters. {Board’s letter No. E(NG)I-2004/TR/16 dated 14.08.2007(R.B.E. No.107 /2007) refers}.”

The above order was issued to implement the judgment of Hon’ble High Court of Kerala in OP No.2150/02. The objective was to maintain a proper balance in the roster points and in order not to inconvenience the staff concerned. Applicant claims that since he is not eligible for further promotion he would not claim reservation henceforth. Applicant got selected in the respondents organisation and rose to the present grade based on policy of reservation. Applicant having made use of reservation till it served him and later discarding it when it does not suit him is not envisaged in any rule. Community based reservation is a National Policy. It has to be followed. Besides, the applicant has scope to be promoted as Asst. Divisional Engineer. Posting of officials of the

reserved community nearer to their home towns has been envisaged by RBE 336/1985 to the extent practicable, implying other conditions have to be satisfied. The other condition in the present case is that the mutual transfer has to be between same communities. Besides, when the conditions of transfer are not satisfied forwarding the same to the competent authority would be an empty formality as the outcome is already known. It would be futile to pursue such empty formalities in the words of Hon'ble Apex Court in *Haryana Financial Corp. v. Kailash Chandra Ahuja*, (2008) 9 SCC 31, the Apex Court has stated:-

40. In *Aligarh Muslim University v. Mansoor Ali Khan* (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. *M* remained absent for more than five years and, hence, the post was deemed to have been vacated by him. *M* challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to *M*. Referring to several cases, considering the theory of “useless” or “empty” formality and noting “admitted or undisputed” facts, the Court held that the *only conclusion* which could be drawn was that had *M* been given a notice, it “would not have made any difference” and, hence, no prejudice had been caused to *M*.”

II) Therefore, the plea of the applicant that an incompetent authority has rejected his application is invalid. Respondents have also stated that mutual transfer is permissible against direct recruit posts and not against promotional quota. Respondents have also explained in detail citing the educational qualifications of the direct recruit and as to why he is ineligible in para 3 of the reply statement with which we agree and requires no repetition. Applicant has also claimed that the East Coast Railway has approved the mutual transfer. The very nomenclature of the transfer is mutual. Unless it is approved by both the railways mutually the transfer cannot be termed as mutual transfer. Therefore both the parties have to agree to call it as an approved mutual transfer. Moreover, all

zones of the Indian Railways will have to follow the same policy. It needs no reiteration that Indian Railway is a single entity and it follows one uniform policy laid down by the Railway Board. Hon'ble Supreme Court has made this emphatic in *Abid Hussain v. Union of India*, (1987) 1 SCC 532, which reads as under:-

"It is not disputed that the Air-conditioned Coach-In-Charges-Attendants are being paid overtime allowances for extra duty hours exceeding 96 hours in two weeks in the Western Railway, Central Railway and Eastern Railway. There is no justification for denying overtime allowances on the same basis to the Air-conditioned Coach-In-Charges-Attendants in the Northern Railway. We accordingly direct the Union of India and the Railway Administration to pay with effect from July 1, 1984 the overtime allowances to the Air-conditioned Coach-In-Charges-Attendants working in the Northern Railway on the same basis on which the Air-conditioned Coach-In-Charges-Attendants in the other three Railways, referred to above, are paid. All arrears of such allowances up to date shall be paid as early as possible and in any event not later than four months from today. The benefit of this order shall be extended to all such employees including those who have retired and those who have not joined as petitioners herein."

Therefore the question of East Coast Railway following a different policy approving the mutual transfer against the Hon'ble Apex Court observation and the Railway Board order referred to does not arise. In addition is also noticed that the applicant has filed the OA without representing to the superior authorities, which he ought to have done.

III) Hence based on the aforesaid facts, as we find no merit to intervene on behalf of the applicant. Therefore the OA is dismissed with no order as to costs. MA 809/2018 stands disposed.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 26th day of April, 2019

evr