(2003) 07 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7868 of 2001

V. Saidulu and Another — APPELLANT

Vs

State of A.P. and Others — RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:
Andhra Pradesh Ministerial Service Rules, 1998 — Rule 22, 27, 27(1)
Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 37

Citation : (2003) 5 ALD 270 : (2003) 5 ALT 567

Hon'ble Judges : G. Bikshapathy, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Nooty Ram Mohan Rao, for the Appellant; M. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This writ petition is directed against the order dated 30-3-2001 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No. 5409 of 2000.

2. The facts of the case in brief giving rise to filing of this writ petition by V. Saidulu and G. V. Krishna Murthy are as follows:

(a) Petitioner No. 1 V. Saidulu was appointed as Junior Assistant in the office of Director of Accounts, Nagarjuna Sagar Project (Accounts), Hill Colony, Nagarjunasagar on 26-10-1968 and he was promoted as Senior Assistant on 16-11-1975. Petitioner No. 2 G.V.Krishna Murthy was appointed as Junior Assistant on 28-4-1969 in the office of Director of Accounts, Nagarjuna Sagar Project (Accounts), Hill Colony, Nagarjunasagar and was promoted as Senior Assistant on 5-7-1977. R-4 K. Prabhakar Reddy was appointed as Junior Assistant on 4-2-1972 in the office of Director of Accounts,. Nagarjuna Sagar Project (Accounts), Hill Colony, Nagarjunasagar and promoted as Senior Assistant on 22-4-1980. R-5 K.V. Durga Rao was appointed as Junior Assistant on 22-6-1971 in the office of Srisailam Left Branch Canal, Circle No. II, Nalgonda and he was promoted as Senior Assistant in the year 1977. The Government formed Pay and Accounts Office at Nalgonda to attend to the pay and accounts functions of the works relating to SLBC under G.O. Ms. No. 6, dated 20-3-1985 with the following staff:

(1) Aissistant Pay and Accounts Officer 1 (2) Superintendent 3 (3) Senior Assistants 6 (4) Junior Assistants 3 (5) Typists 1 (6) Attenders 3

The Government issued memo prescribing the method of filling up of non-gazetted posts in the newly formed Pay and Accounts office at Nalgonda. As per the memo dated 26-7-1985 issued by Finance and Planning (Projects Wing) Department, Government of Andhra Pradesh, the non-gazetted posts in SLBC shall be filled up by the surplus staff of Director of Accounts, NSP and Director of Accounts, Srisailam Project. Number of posts to be filled up from the Director of Accounts, NSP and Director of Accounts, Srisailam Project are also specified in the said memo. The surplus staff of Director of Accounts, NSP to be absorbed in the Pay and Accounts office of SLBC shall form part of Director of Accounts, Srisailam Project and their transfers are treated as on administrative grounds. The office of Director of Accounts of Nagarjunasagar Project allotted the surplus staff on the principle of last come first go to the newly formed office of Pay and Accounts of SLBC, Nalgonda. The office of Director of Accounts, Srisailam Project under office Order No. DOA/SLMP/F.29/85-86/ 163, dated 10-8-1985 posted R-4 and nine others in the Pay and Accounts Office at SLBC. He joined as Senior Assistant on 20-8-1985. R-5 was a Senior Assistant in the office of SLBC, Circle-II, Nalgonda, he came to the office of Pay and Accounts, SLBC, Nalgonda on his request by taking the last rank in the category of Senior Assistant. He jointed as Senior Assistant in the Pay and Accounts office on 3-9-1987 Consequent on the reduction of the establishment in the office of Pay and Accounts organization of Nagarjuna Sagar Project, certain posts were diverted to Pay and Accounts offices of Priyadarshini Jurala Project at Gadwal and Srisailam Left Branch Canal at Nalgonda under Government Order dated 16-6-1988. Willingness of the persons working in different cadres in the Directorate of Accounts, Nagarjunasagar Project was called for. Thirteen Senior Assistants expressed their willingness to work in the Pay and Accounts office of SLBC, Nalgonda. The names of 13 Senior Assistants as per the seniority in the office of Director of Accounts, Nagarjunasagar Project, Hill Colony who expressed their willingness to work in the Pay and Accounts office, SLBC, Nalgonda are as follows:

(1) Samad Razvi

(2) M. Venkulu

(3) V. Saidulu (Petitioner No. 1)

(4) G.V. Krishna Murthy (Petitioner No. 2)

(5) V. Bhikshmaiah

(6) V. Anjaiah

(7) Ch. Veeradasu

(8) K. Kondaiah

(9) V. Mattaiah

(10) K. Narasimha Reddy

(11) L. Venkateswarlu

(12) Md. Hashmat Ali

(13) V. Damodar

Posts in the cadre of Senior Assistant diverted from the office of Director of Accounts, Nagarjunasagar Project to the Pay and Accounts office of SLBC, Nalgonda were only ten. 1st petitioner is shown in Sr.No. 3 and 2nd petitioner is shown in Sr.No. 4 in the above referred seniority list. Of the persons mentioned in the list, Ch. Veeradasu was retained in the office of Directorate of Accounts, Nagarjunasagar Project on administrative reasons. On the principle of last come first go, the persons mentioned in Sr.No. 3 to 6 and 8 to 13 were transferred along with their posts to the office of Pay and Accounts, SLBC, Nalgonda, R-4 and R-5 who were then working as Senior Assistants in the office of SLBC, Nalgonda filed R.P.No. 3283 of 1988 questioning the transfer of senior most employees pursuant to G.O.Ms.No. 19 dated 16-4-1988 P & P (PW) from the office of Directorate of Accounts, Nagarjunasagar, Project to the Pay and Accounts office of SLBC, Nalgonda. Petitioners 1 and 2 were impleaded as R-7 and R-8 in the said R.P. The learned Administrative Tribunal disposed of the said R.P. on 13-7-1994 with a direction to the official respondents to regulate the seniority in accordance with the provisions contained in Rule 27 of A.P. Ministerial Service Rules after verifying whether the transfer from one unit to another unit is on administrative ground or at the request of the concerned employees. The Director of Accounts, Srisailam Project promoted R-4 as Superintendent under proceedings No. PAO/91-92/F/29/100 dated 5-8-1991 under Rule 37(a)(l) of A.P. State and Subordinate Rules subject to the result of R.P.No. 3283/88. It is indicated in the order that his promotion is purely temporary and is liable for reversion at any time without assigning any reasons.

(b) One Samad Razvi, filed O.A. No. 3794/91 questioning the promotion of R-4 as Superintendent and obtained interim direction on 26-8-1991 to the official respondents to consider his case for promotion to the post of Superintendent, if he is eligible and suitable and if R-4 is junior to him and vacancies are existing.

(c) The writ petitioners filed O.S.36090 and 36091 of 1991 questioning the promotion of R-4 and obtained interim direction on 13-7-1991 to the official respondents to consider their case for promotion to the post of superintendent as per the rules keeping in view the fact of R-4 being junior to them was promoted as Superintendent.

(d) The Director of Accounts, Srisailam Project issued proceedings No. PAO/

Admn/ EC/93-94 dated 26-8-1993 canceling the promotions of R-4, R-5 and M.A. Hafiz. They questioned the proceedings canceling their promotion by filing O.A.No,4529 of 93 and obtained interim suspension of orders on 1-9-1993. R-4 and R-5 also filed O.A. (Sr) No. 11753/95 questioning the action of official respondents in treating the transfer of Samad Razvi and M. Venkulu from the unit of Directorate of Accounts, Nagarjunasagar Project to the unit of Director of Accounts, SL.BC on administrative grounds. Since there was delay in filing the O.A. they moved M.A.No. 2583/95 seeking condonation of delay of one year nine months and twenty seven days.

(e) The learned Administrative Tribunal by a common judgment dated 23-7-1997 allowed O.A.4529/93 and dismissed O.As.37994, 36090 and 36091 of 1991 and M.A.No. 2583 of 1995. The operative portion of the common judgment reads as follows:

"In the result the impugned proceedings in O.A. No. 4529/93 is set aside and the O.A. is allowed, O.A.No. 37994/91 and 36090/91 and 36091/91 are adismissed, but this will not preclude the official respondents from preparing a final seniority list as per law in the category of Sr. Assistant, if not already done communicate the same to all concerned so that every senior Assistant will know his correct placement in the seniority list and protect his legitimate career interests. No costs."

Director of Accounts, Srisailam Project addressed a letter to the Director of Accounts, Nagarjunasagar Project to intimate the factual position whether the transfers made in pursuance of the Government Order dated 16-6-1998 and 23-1-1990 were on administrative ground or otherwise. The Director of Accounts, Nagarjunasagar Project replied under letters, dated 21-11-1994 and 6-12-1994 that all the staff members transferred as per Government Order dated 16-6-1998 and 23-1-1990 were on administrative grounds.

(f) The office of Director of Accounts, Srisailam Project prepared provisional seniority list of Superintendents/Senior Assistants working in the Pay and Accounts Office, SLBC scheme, Nalgonda basing on the information furnished by the Director of Accounts, N.S. Project under letter No. DOA/NSPHC/ADMN/ M2/94-95/206 dated 21-11-1994 and circulated the list to the individuals concerned enabling them to submit representations, if any, on the seniority assigned to them in the list. As per the provisional seniority, 1st petitioner is at Sr.No. 5 and 2nd petitioner is at Sr.No. 6, R.4 is at Sr.No. 8 and R-5 is at Sr.No. 20. The said provisional seniority was re-circulated on 29-3-2000 i.e., after disposal of OAs.4529/ 93 and batch. Keeping in view the directions given in R.P.No. 3283/88 O.A.No. 4529/93 and batch Rev.M.A.No. 2040/97 in O.A. Nos. 36090 and 36091/91, the 6ffice of Directorate of Accounts, N.S.Project, Kurnool prepared final seniority list under Proceedings No. JDWA/NSRSF/KNL/Admn/ F.79(a)/ 2000-01/269 dated 23-8-2000. As per the final seniority list, the 1st petitioner is at Sr.No. 2, 2nd petitioner is at Sr.No. 3, R-4 is at Sr.No. 5 and R-5 is at Sr.No. 13. Basing on the final seniority list, R-4 and R-5 were reverted from the post of Superintendent to the post of Senior Assistant under Proceedings No. JDWA/NSRSP/KNL/ Admn/F.29(a)/2000-01/334, dated 27-9-2000 and JDWA/ WSRSP/KNL/Admn/F.29/2000-01/333 dated 27-9-2000. In their place, petitioners were promoted as Superintendents under proceedings in No. JDWA/ NSRSP/ KNL/Admn/F.29/2000-2001/335 dated 28-9-2000. R-4 and R-5 fifed O.A.No. 5409/2000 questioning the seniority list issued in proceedings dated 23-8-2000 and their reversion from the post of Superintendents to the Senior Assistant. It was contended by R-4 and R-5 before the Tribunal that the inter-se seniority between them and petitioners 1 and 2 was decided in the earlier proceedings i.e., in R.P.3283/88 and O.A.4529/93 and batch and therefore the official respondents were estopped from revising the inter-se seniority between the parties to the said proceedings. Unofficial respondents took the stand in the earlier proceedings that petitioners 1 and 2 were transferred on diversion along with their posts from the unit of Director of Accounts, N.S. Project to the unit of Director of Accounts, Srisailam Project on lental basis and therefore they were not eligible to assign seniority in the unit Director of Accounts, Srisailam H.E. Project. It is useful to refer the relevant portion of the counter of the unofficial respondents filed in O.A.Nos. 36090 and 36091/91. "The petitioners herein were the applicants and R-4 herein was R-3 in the said OAs".

"Para-10:- In reply to para 10 of OAs, I am to submit that the Accounts Organisations of the Major Projects in the State of Andhra Pradesh are individual and separate units. The director of Accounts is the head of the Accounts Organisation and he is the concerned unit officer. The director of Accounts is the appointing authority in respect of all non-gazetted posts in his unit. The vacant posts in all non-gazetted categories will be filled by the Director of Accounts duly following the Andhra Pradesh Ministerial Service Rules by promoting the eligible persons as per the seniority. In respect of Accounts organization of Srisailam Project, the Director of Accounts is the Unit officer. The first batch of staff was declared as surplus in the Unit of Director of Accounts, NS Project and joined in the unit of director of Accounts, Srisailam Project at Pay and Accounts Office, Nalgonda on 20-8-1985 in Zone-VI on administrative grounds vide Government Memo No. 128/Services/85-1, dated 26-7-1985 of Finance & Planning (PW) Department, on the date of formation of the Pay and Accounts Office, Srisailam Left Branch Canal Scheme, Nalgonda in Zone-VI. Relative seniority has been given in the unit of Director of Accounts, Srisailam Project to the first batch of staff under Zone-VI. The first batch of staff is the part and parcel of Director of Accounts Unit, Srisailam Project. The one of the respondents of the OAs Sri. K. Prabhakar Reddy was transferred to the Director of Accounts, Srisailam Project unit in the first batch on administrative grounds on 20-8-1985. Therefore, relative seniority was given to him in the unit of Director of Accounts, Srisailam Project. Subsequently, the applicants of the OAs, alongwith some other staff were transferred to the unit of Director of Accounts, Srisailam project from the unit of Director of Accounts, NS Project along with their posts on diversion basis vide G.O. Ms. No. 19 Finance and Planning (PW) Department, dated 16-6-1988.

As per Rule 27(ii) of A.P. Ministerial Service Rules, in case of a person whose services are lent from the department or office to another the service rendered by him in any higher post in the Department or office to which his services were lent shall count for seniority in the parent department or office only from the date of regular appointment or promotion to such higher posts in the parent department or office only from the date of regular appointment or promotion to such higher posts in the parent department or office. In this case, the applicants of the OAs were transferred on diversion along with their posts from the unit of Director of Accounts NS Project to unit of Director of Accounts, Srisailam Project. Therefore, the services of the applicants of the OAs. are to be treated as lent from Director of Accounts, NS Project to Director of Accounts, Srisailam Project on temporary basis. Hence, the applicants of the OAs are not eligible to assign seniority in the unit of Director of Accounts, Srisailam Project (Under zone-VI) as their services are being treated on lental basis. The applicants of the OAs are eligible for seniority as per the Rule 22(i) of the A.P. Ministerial Service Rules in the unit of Director of Accounts, N.S.Project only which is their parent unit. Because their transfers from NS Project to Srisailam Project is only temporary. As and when the work is complete or reduced or it is felt to reduce the staff in Pay and Accounts Office, Srisailam Left Branch Canal Scheme, Nalgonda that means in the unit of Director of Accounts, Srisailam Project the staff who were taken on diversion will be sent back to their parent unit. Therefore, the contention of the applicants that they were seniors to Sri. K. Prabhakar Reddy is not correct."

Irrespective of the contention put forth by the official respondents in the earlier proceedings, the Tribunal directed them to fix inter-se seniority of the parties to the proceedings as per law. We make, ourselves clear that orders passed by the Tribunal in R.P.No. 3283/88 and O.A.No. 4523/88 and batch do not preclude the official respondents from preparing the seniority list as per law. R-4 and R-5 filed O.A.No. 5430/2000 questioning the seniority assigned to them in the proceedings dated 23-8-2000 and their consequential reversion from the post of Superintendent to Senior Assistant, It is the case of R-4 and R-5 that the transfer of petitioners was on request and therefore they were to take the last place in the seniority list of Senior Assistants in the office of Pay and Accounts, SLBC/ Nalgonda. Whereas it is the case of the petitioners that their transfer was on administrative ground and therefore their seniority in the parent department as Senior Assistant was to be taken into consideration. It is not in dispute that surplus staff of the office of Director, NS Project were sent to the newly formed Pay and Accounts office, SLBC at Nalgonda in three batches. R-4 and R-5 were in the first batch. The petitioners were in the second batch. In their parent department, the petitioners were seniors to R-4 both in the cadre of Junior Assistant and Senior Assistant. The simple question is whether the transfer of petitioners 1 and 2 was on administrative ground or on their request. The learned Tribunal passed the judgment on the ground that the transfer of petitioners from the unit of Director of Accounts, N.S. Project to the office of Pay and Accounts, SLBC at Nalgonda was at their request.

3. The learned Counsel for the petitioners contends that the findings in earlier proceedings do not prevent the official respondents to prepare the seniority list as per law and therefore the Tribunal was not justified in taking stray observations in the earlier proceedings to conclude that the transfer of the petitioners was at their request. This argument is countenanced by Counsel for the respondents on the ground that the findings recorded by the Tribunal in the earlier proceedings cannot be ignored by the official respondents in preparing the seniority list. It is further contended by him that findings of fact recorded by the Tribunal is not required to be interfered with in the writ jurisdiction except where the High Court is satisfied that the finding is vitiated by a manifest error of law or is plainly perse. It is also contended by him that the promotions given to R-4 and R-5 cannot be reviewed after a long lapse of 9 or 10 years of their officiating in the promotion post. He placed reliance on the decision of Supreme Court in A.P. SRTC and Others Vs. V. Veeraiah, , Ashok Kumar and Others Vs. Sita Ram, , and the decision of our High Court in G. Veeraiah Vs. Government of Andhra Pradesh and others, . In the first cited decision, a conductor in APSRTC came to be transferred pursuant to the order made by the Corporation on 8-7-1980. In that order it was noted that he was transferred on his request and his seniority will be reckoned in the manner stated therein. The Supreme Court held that since the transfer of the conductor was pursuant to his request it couldn''t be treated to'' have been effected on account of administrative exigencies and creation of a new division. In the second cited decision, the Supreme Court held that the High Court ought not to have interfered with the order of Administrative Tribunal in the writ jurisdiction except where the High Court satisfied that the finding is vitiated by a manifest error of law or is primarily perverse and that the High Court could not interfere only because it takes a different view on the material on record. In the third cited decision, our High Court held that in case of transfer on request from one unit to another unit, seniority of a member is to be reckoned in the transferred unit as provided under Rule 27 (iii) of A.P. Ministerial Service Rules.

4. The parties here have pursued a long drawn, litigation right from the year 1988 i.e. when the second batch of employees were transferred to the Pay and Accounts Office, SLBC, Nalgonda consequent on reduction of establishment in Director of Accounts, N.S. Project under G.O. Ms. No. 19 Finance and Planning (PW-2) Department, dated 16-6-1988. The promotion of R-4 was questioned in the year 1991 itself. His date of promotion is 5-8-1991. He continued for a quite long time under interim orders and finally reverted to the post of Senior Assistant with effect from 28-9-2000. Same is the case with R-5. Therefore it can safely be concluded that it is not a case where the petitioners wanted to disturb the position of R-4 and R-5 after their working in the post of Superintendent for quite a long time.

5. The learned Tribunal in the impugned order has observed that in the earlier proceedings seniority of the petitioners was directed to be fixed as provided under Rule 27(iii) of A.P. Ministerial Service Rules. We feel it apposite to refer the

relevant portion of the impugned order and it reads as follows:

"Thus, we do not have any hesistation to hold that the applicants were transferred on administrative grounds being surplus staff in the Accounts Organisation of N.S, Project to Srisailam Project and that, the party respondents have become juniors in the Srisailam Project to which they have been transferred at their own request, as held by this Tribunal in the earlier O.As, Rule 27(iii) of A.P. Ministerial Service Rules clearly laid down that when the transfer is made at request, the employee has to take the seniority as per the date of his joining and that those who are transferred on administrative grounds will retain the original seniority in the parent organization from which he was transferred.

In view of the rule position as well as the judgments rendered by this Tribunal in the earlier O.As, it is to be held that the applicants are seniors to the parry respondents and the impugned proceedings in this O.A., are liable to be set aside and accordingly they are set aside. The O.A. is thus allowed. Consequently VMA No. 517/2000 is dismissed. M.A. No. 2658/2000 stands disposed in view of the disposal of the main O.A. No costs."

It is no doubt in the earlier proceedings the Tribunal made some stray observations with regard to the nature of the transfer of the petitioner from the office of Director of Accounts, N.S. Project to Pay and Accounts Office, SLBC, Nalgonda. But no specific finding was given in the earlier proceedings that the seniority of the petitioners shall be fixed under Rule 27(iii) of A.P. Ministerial Service Rules. The direction given in the earlier proceedings was to verify whether the transfer of the petitioners from the unit of Director of Accounts, N.S. Project to Pay and Accounts Office of SLBC, Nalgonda was on request or on administrative grounds and regularize their seniority as per Rule 27 of A.P. Ministerial Service Rules. The stray observations made by the Tribunal in earlier proceedings do not come in the way of the official respondents in examining the circumstances under which the petitioners were transferred to Pay and Accounts office of SLBC, Nalgonda and passing appropriate orders with regard to fixing of inter-se seniority between the petitioners and R-4 and R-5 in the Pay and Accounts office, SLBC, Nalgonda. The Tribunal made an observation that the transfer of petitioners to Pay and Accounts office, SLBC, Nalgonda was on lental basis. We have read and reread G.O. Ms. No. 19 Finance and Planning (PW) Department dated 16-6-1988 and O.O.NO.DOA/NSF/Admn/M2/P23/88-99/ 179 Dated 24-6-1988, Under G.O. Ms. No. 19 Finance and Planning (PW) Department dated 16-6-1988 the Government diverted certain posts to Pay and Accounts office, Priyadarshini Jurala Project, Gadwal and SLBC, Nalgonda. It is no where indicated in the Government Order that the diversion of the posts was only temporary and after completion of a fixed tenure, the diverted posts were to be re-transferred to the office of Director of Accounts, N.S.Project The diversion posts from the office of Director of Accounts, N.S. Project was in the process of reduction of establishment. Therefore, it cannot be assumed and presumed that the diversion of posts from Director of Accounts office, N.S.Project to the Pay and

Accounts office of SLBC, Nalgonda was only a temporary measure and the diverted posts were likely to be re-transferred to the Director of Accounts, N.S.Project. The Tribunal proceeded on the basis that the petitioners were transferred to Pay and Accounts office SLBC, Nalgonda on lental basis. The concept that the petitioners were transferred to Pay and Accounts office of SLBC, Nalgonda on lental basis was a misconceived one. The diverted posts should either continue or abolish in the Director of Accounts, SLBC, Nalgonda. The surplus staff in the Director of Accounts, N.S.Project were shifted to the Pay and Accounts office of SLBC, Nalgonda in three batches. The principle adopted in shifting the staff from the unit of Director of Accounts, N.S.Project was last come first go. Junior most among the surplus staff were shifted from the Director of Accounts office, N.S. Project to Pay and Accounts Office, SLBC, Nalgonda. R-4 was shifted in the first batch as he happened to be the junior to the petitioners. In the second batch, ten employees in the cadre of Senior Assistants were to be transferred to Pay and Accounts office of SLBC, Nalgonda. 13 Senior Assistants exercised their willingness to go to Pay and Accounts office SLBC, Nalgonda. In the list of 13 persons, the name of 1st petitioner is at Sr.No. 3 and the name of 2nd petitioner is at Sr.No. 4. In usual course, individuals mentioned in Sr.Nos.4 to 13 would have been transferred to Pay and Accounts office, SLBC, Nalgonda. Since Ch. Veerudu whose name finds in Sr.No. 7 was retained in the office of the Director of Accounts, N.S. Project on administrative reasons, the turn of 1st petitioner whose name is shown at Sr.No. 3 had come and so he was transferred along with 2nd petitioner and others. The circumstances under which they were transferred were detailed in the letter addressed by the Director of Accounts, N.S. Project to the Director of Accounts, Srisailam Project vide letter DOA/ NSP/ Admn/M2/94-95/206 dated 21-11-1994. The letter is self explanatory and no further document need to be looked into to arrive at the conclusion that the transfer of petitioners was on administrative ground.

6. Learned Counsel for R-4 and R-5 has laid much emphasis on the letter dated 19-5-1988 of 2nd petitioner addressed to the Director of Accounts, N.S, Project to convince us that the transfer of the petitioner No. 2 was on request and not on administrative ground. Since much emphasis has been laid on the said letter, we feel it apposite to extract the setter for better understanding.

"I, G.V. Krishna Murthy, Senior Assistant working in the office of the Pay and Accounts office, Miryalguda, section submit the following few lines for kind consideration.

I was recruited in this organization on 28-4-1969 as L.D.C. and promoted as U.D.C. with effect from 21.10.1976 and worked in the branch office at Miryalguda and Hill colony since then at present working at Miryalguda section.

In this connection, I submit that my native place is Mangalpally, Nakrekal Mandal, Nalgonda District which is very nearer to Nalgonda in between 10 to 15 Kms. My old parents are staying at my native place under the treatment of one of the Doctor who is also relative to my family. As I am far away from my native place at present I could not attend the requirements of my old parents.

In view of the facts enlightened above I hereby request that my willingness for transfer to the Accounts organization S.L.B.C. Nalgonda may kindly be considered sympathetically for which act of kindness, I shall ever grateful to you sir.

Thanking you, Sir.

Yours faithfully,

Sd/- dated 19-5-1988

(G.V. Krisnna Murthy, Sr.Assistant, PAO office, Miryalguda)"

In the above referred letter 2nd petitioner expressed his willingness for transfer to the accounts organization of SLBC, Nalgonda. It is not the willingness of 2nd petitioner that made the Director of Accounts to propose his transfer to the office of Pay and Accounts, SLBC, Nalgonda. It was because of his coming within the purview of ten Senior Assistants among the surplus staff to be sent to Pay and Accounts office, SLBC, Nalgonda on the principle of last come first go basis. Willingness of the 2nd petitioner expressed in the above referred letter cannot be construed as a request in the circumstances of the case.

7. Rule 27 of A.P. Ministerial Services Rules. Rule 27 of A.P, Ministerial Service Rules reads as follows:

"27. Probation, Seniority and confirmation Special provisions :--(1) Service rendered in a post or group of posts bearing distinct designation and included in a category as constituted by Rule (1) shall count for probation and seniority in such post or group of posts irrespective of the scales of pay applicable to such posts or group of posts and irrespective of the department or office in which such service was rendered.

(i) Provided that, in the case of a person whose services are lent from one department or office to another, the service rendered by him in any higher post in the department or office to which services were lent shall count for seniority in the parent department or office only from the date of regular appointment or promotion to such higher post in the parent department or office;

(ii) The seniority of a member of the service who is transferred on administrative grounds only from one department or office to another shall be fixed in the latter department or office with reference to the date of his first appointment in the former department or office;

(iii) the seniority of a member of the service who is transferred at his own request from one department or office to another shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office."

It is explicit from Rule 27(1)(ii) of A.P. Ministerial Service Rules that in case of transfer of a member on administrative grounds from one department to another department, his seniority is to be fixed in the latter department with reference to the date of his first appointment in the former department or office.

8. Admittedly, the petitioners were seniors, to R-4 both in the cadres of Junior Assistants and Senior Assistants in the office of Director of Accounts, N.S, Project. On the principle of last come first go basis among the surplus staff R-4 was transferred in the first batch and petitioners were transferred in the second batch. The letter dated 21-11-1994 of the Director of Accounts, N.S.Project is explicit that the petitioners were transferred to Pay and Accounts office, SLBC, Nalgonda on administrative grounds. The finding of the Tribunal that the petitioners were sent to Pay and Accounts office, Srisailam Project on lental basis cannot be sustained. When once the transfer of petitioners to Pay and Accounts office, SLBC, Nalgonda was on administrative grounds, their seniority should be fixed in the Pay and Accounts office, SLBC, Nalgonda with reference to the date of their promotion as Senior Assistants in the office of Director of Accounts, N.S. Project.

9. For the foregoing reasons, we are satisfied that the finding of the learned Tribunal that the petitioners are juniors to R-4 and R-5 in the Pay and Accounts office, SLBC, Nalgonda is vitiated by manifest error of law it needs to be modified. In the result, this writ petition is allowed setting aside the impugned order dated 30-3-2001 in OA No. 5409 of 2000 of the Tribunal and consequently OA filed by R-4 and R-5 stands dismissed.