

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 62 of 1992

Hori Lal and Others ..... Applicants

Versus

Union of India and Ors. .... Respondents

CORAM:

Hon. Mr. Justice R.K. Varma, V.C

Hon. Mr. K. Chayya, Member(A)

---

( By Hon. Mr. Justice R.K. Varma, V.C. )

By this application the applicants have sought relief in the nature of two directions to be given to the respondents namely; (i) that the respondents be directed to pay the travelling and transfer allowances of the applicants from July 1990 onwards alongwith incremental benefits with the arrears from the date when they attained temporary status under the rules and (ii) that the respondents be further directed to regularise the services of the applicants from the date when their juniors have been regularised and posted against clear vacancies of Group-D category posts.

2. In the application it has been averred that the applicants were initially appointed as Casual Gangmen in the years 1969-70 in Allahabad Division of Northern Railway and since then they have been working continuously as Gangmen under the control and supervision of the respondents and that the

applicants attained the status of temporary Railway employee after continuous working for more than 120 days and were entitled as such employees to get the benefits of pay scale, increments and arrears, but the same were not paid to them ~~to arbitrary~~ <sup>arbitrarily</sup>. It has been further submitted in the application that at present all the applicants are working as Gangmen under the Permanent Way Inspector (TRT), Northern Railway, Khaga in Allahabad Division but their services have not been regularised, whereas the junior persons have been empanelled and their services have been regularised. The applicants have <sup>also</sup> alleged that while they were working under P.W.I (PQRS), Northern Railway, Etawah, they were transferred and were posted under P.W.I (PQRS) Northern Railway, Chunar from where they were sent for duty to work shop superintendent Northern Railway Meerut Cantt in the month of July 1990 and since then they have been working there except when they were sent back to collect their pay from the place of duty i.e. Chunar/Manda Road. It has been stated that the applicants applied for travelling allowance from 5.9.90 onwards regularly till their stay at Meerut and also submitted their T.A. Bills every month to P.W.I Chunar/Manda Road till 17.4.91/3.5.91 but their T.A bills were not paid till date.

A.K.W.

2. The applicants have filed as Annexures to the application their representations made to the Divisional Engineer Northern Railwat Allahabad (Annexures A-2 and A-3 to the application) and also

to the Divisional Superintending Engineer/SPL, D.R.M. Office Northern Railway Allahabad (Annexures A-4 and A-5 to the application). The applicants also made a representation to the Divisional Railway Manager, Northern Railway Allahabad. On the question of non-payment of T.A and less payment of salary due to wrong fixation of pay copy of which has been filed as Annexure A-6 to the application.

3. It has been averred in the application that all the applicants prior to July 1990 have been paid their travelling allowances but suddenly, the concerned officers became annoyed with the applicants and stopped payment of transfer and travelling allowances to the applicants. To evidence payment at an earlier date a specimen copy of pay slip of applicant no. 3 & 4 has been filed as Annexure A-7 to the application.

4. In the Counter filed by the respondents, the respondents have submitted that payments have been made to the employees who have submitted particulars of the travelling allowances. In para 7 of the Counter it has been stated that except Hori Lal all the applicants are under CPC scale and as such they are not entitled to any travelling allowance because they are usually transferred in special works.

5. In para 14 of the Counter, it has been averred that since CPC scale employees are usually transferred on special works and as such they are not

Rlu

paid travelling allowances and further particulars of the travelling allowances was not submitted in the office, as such there does not arise any question for the payment of the travelling allowance.

6. The learned counsel for the respondents has not been able to show us any provisions to the effect that the temporary employees under CPC scale are not entitled to any travelling allowances when transferred to the special work <sup>is there any material placed to show</sup> that the places to which the applicants were transferred were places of special works.

7. In Chapter 36 of the Railway Establishment Manual II Edition 1985 pertaining to Casual Labour and substitutes, the benefits admissible on getting temporary status are stated at page 771 as under:-

They will be entitled to all the rights and privilege admissible to temporary Railway servants under Chapter XXIII EM viz Revised scale of pay, Compensatory and local allowance. DA, medical facilities, leave, PF facilities, Passes, Notice for termination of service and Hospital leave. They will also be entitled to the benefits of D&A Rules. Their service, prior to the date of completion of 120/180 days will not, however, count for any purpose

Also

like seniority etc. They can carry their leave due to the new post of absorption in regular service. They will however not be brought to permanent establishment till they are selected through regular Selection Boards for class IV staff. They will however have a prior claim over others to permanent appointment. Those who join as CL before 25 years of age, may be allowed relaxation of maximum age limit to the extent of their total service.

Half of their service after attainment of temporary status if followed by regular absorption, may count towards pension.

8. The Introductory in Chapter VIII of the aforesaid Manual which deals with travelling allowance, states as under:

The travelling allowance popularly called as daily allowance in certain departments is granted to the employees to enable them to meet with the additional expenses involved in their staying outside head quarters. It is admissible to all employees including Casual Labour, when they are deputed to perform duty away from their head quarters. The Govt. work may require the employees to travel frequently in the interest of public service. The employees may shirk going out, because it is quite expensive.

Besides Board and lodging, one has to spend certain incidental expenses too. So to compensate the employee for such expenses, daily allowance is granted.

9. As regards continuous halt, it is provided in the said Chapter that the Daily allowance is not admissible for a continuous halt of more than 30 days at any one place; provided that the Railway Board, the General Manager or Engineer-in-Chief grant general or individual exemptions from the operation of these orders if he is satisfied:-
- (a) that prolonged halts are necessary in the interests of the railway service; and
  - (b) that such halts continue after the first 30 days to entail extra expenses upon the halting railway servant.

10. It is apparent that the applicants or some of them have received travelling allowance earlier and the specimen (Annexure A-7 to the application) <sup>is a</sup> ~~was~~ testimony to this fact. It is also apparent that the applicants have made grievance to the respondents that their travelling allowance has not been paid to them inspite of submitting their individual T.A forms in the office. In their representation to the Divisional Railway Manager, Northern Railway, Allahabad (Annexure A-6 to the application), the applicants, besides making grievance about non-payment of TA and less payment of salary due to wrong fixation of pay have made further

grievance that although they have been continuously working since about 9.6.1970 and thereafter, but they have not yet been regularised, whereas juniors to them have since been empanelled and their services have been regularised.

11. The aforesaid representations of the applicants have not been considered apparently and the grievances remain to be redressed. The submission made on behalf of the respondents that T.A. forms were not submitted by the applicants does not appear plausible especially when on submission of T.A. forms the applicants had received payment of T.A. on earlier occasions.

12. Learned counsel for the applicant cited a decision in Administrative Tribunals Cases Vol. 15, Part 3, it has been held in the case of Ramnivas Matadeen and 42 others Vs. Union of India and Ors as follows:-

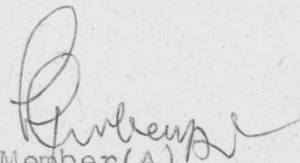
Under Para 2501 of the Manual, a casual labourer is not liable to transfer. Hence, when shifted from headquarters to work at certain projects, he would still be deemed to have retained his headquarters at the original place. In view of the provisions of Rule 203 of the Code and para 2508 of the Manual, the applicants, who are railway servants under para 2507 of the Manual, if deputed to work beyond a radius of 8 kms from their headquarters, would be entitled to daily allowance as well as to travelling allowance

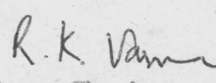
Transfer- Casual labourers-held, not liable to transfer- Hence, impugned order transferring railway project casual labourers out of the seniority unit, held, bad- Railway Establishment Manual, Para 2501.,

wherein, we are in agreement with the view taken in the aforesaid decision and in our opinion it answers the basic controversy involved in this case. Accordingly, a casual labourer if deputed to work at a place away from the headquarters would be entitled to Daily allowance as well as to travelling allowance.

13. Accordingly, we direct that the respondents shall give the applicants an opportunity of hearing and consider and decide the representations made by them ~~and~~ filed as Annexures to the application before us, as mentioned hereinabove and we further direct that payment of the amounts as found due to the applicants by way of allowances and arrears etc shall be made to them. The respondents shall also decide the question of regularisation of the applicants and in case any junior to the applicants has been regularised prior to this date, the applicants shall be entitled to be regularised.

13. With the directions as above, this application stands disposed of. There shall be no order as to costs.

  
Member(A)

  
R.K. Vanner  
Vice Chairman

Dated: 21<sup>st</sup> May, 1993

(Uv)