

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 162
T. A. No.

1991

DATE OF DECISION 17.7.91

Mr. M. Mohamed Jalal

Applicant (s)

Mr. P. Sivan Pillai

Advocate for the Applicant (s)

Versus

The Divisional Electrical Engineer, (Construction)
Southern Railway, Ernakulam South Respondent (s)
and others

Mr. M. C. Cherian

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Applicant who is a casual labourer (Technical Mate) now working under the second respondent filed this application without knowing that the Indian Railway Establishment Manual has undergone change in the year 1990. He has challenged Annexure A-1 order dated 22.1.91 transferring him to Trichur by shifting the Headquarters for this work. Relying on para 2501 of old Indian Railway Establishment Manual he contended that casual labourer is not liable to transfer. He was at Ernakulam from 24.2.88. Many of his juniors are retained at Ernakulam and the applicant has been singled out

for transfer to Trichur under the impugned order. Hence, he has filed this application under section 19 of the Administrative Tribunals' Act, 1985, with the following reliefs:

- (a) To call for the records leading to the issue of Annexure A-1 and quash the same;
- (b) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case.

2. The respondents in the counter affidavit submitted that the applicant is presently working as a casual labourer, Technical Mate, under the Divisional Electrical Engineer (Construction) Southern Railway, Ernakulam. He has obtained temporary status and a Service Book had been opened for him just as in the case of a temporary status casual labourer. He was initially engaged as casual labourer (Khalasi) (unskilled) in Trivandrum on 6.4.83. He became a casual labourer Technical Mate (skilled) w.e.f. 6.8.83. Thereafter, he has been granted temporary status as Technical Mate in the pay scale of Rs. 330-480 w.e.f. 30.3.84 on completion of 360 days of casual labourer service. Since he has given option to come over to the revised scale of pay under the Railway Services (Revised Pay) Rules, 1986 w.e.f. 1.1.86, his pay was revised and fixed in the scale of Rs. 1200-1800 w.e.f. 1.1.86. He is also being given annual increment in the said scale. At present he is being paid Rs. 1350/-

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in the above scale. After his initial engagement at Trivandrum he was assigned work under the Electrical Foreman at Palayankottai and he has worked there till 5.7.83. Thereafter, he was transferred to Ernakulam and xx xx worked under the Electrical Foreman (Construction) Ernakulam from 6.7.83. to 5.5.84. He was shifted to Madurai and directed to work there in the exigency of service till 24.2.88. Afterwards he has again come to Ernakulam and started working under the Assistant Engineer (Electrical) Ernakulam w.e.f. 24.2.88. It is after February, 1988 that the office of the Divisional Electrical Engineer was established in Ernakulam in August, 1988. He is borne on the divisional seniority of construction electrical casual labourer of Trivandrum Division. He is liable to work anywhere under the jurisdiction of the Divisional Electrical Engineer so long as there is work. The impugned order was passed in the exigency of work and it is not liable to be set aside.

3. We have heard the arguments of the learned counsel on both sides and perused the records. The entire argument of the learned counsel for the applicant is based on para 2501 (a) of the Indian Railway Establishment Manual and the orders issued by the Railway Board pertaining to transfer and the eligibility of T.A. In so far as transfer is concerned Para 2501 (a) states as follows:

"Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer and the conditions applicable to permanent and temporary staff do not apply to such labour."

According to him a close reading and true understanding of the provisions of para 2501 and 2508 make it clear that casual labourers are not liable to transfer from one place to another and that they are entitled to daily allowance if they are asked to go and work at a distant place. It is to avoid the payment of the allowances that the transfer of the Headquarters was ordered under the impugned provision.

4. Para 2501 of the Railway Establishment Manual has been recasted by the Indian Railway Establishment Manual Vol. II 1990. The re-casted provision reads as follows:

"2001 (i) Definition of Casual Labour: Casual labour refers to labour whose employment is intermittent, sporadic or extends over short periods of continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour."

Para 2508 has been deleted.

Under the aforesaid provision a casual employee is liable to transfer in the exigency of service. In this case, the respondents have stated that service of the applicant is required at Trichur and hence he has been transferred as per the impugned order by shifting the Headquarters.

5. This being a transfer in the exigency of service as provided in the Railway Establishment Manual, we are reluctant to intervene and entertain the contentions urged by the applicant. There is no substance in the application. It is only to be rejected. Accordingly, we dismiss the application as devoid of any substance. There will be no order as to costs.

Dharmadan

(N. DHARMADAN)
JUDICIAL MEMBER

17.2.91

Varma

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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