

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 275 of 1991
~~T. A. No.~~

DATE OF DECISION 23-3-1992

P Mohanan and 5 others Applicant (s)

M/s M Ramachandran & Advocate for the Applicant (s)
P Ramakrishnan
Versus

Senior Divisional Personnel Respondent (s)
Officer, Palghat & 2 others

Mr MC Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. PS HABEEB MOHAMED, ADMINISTRATIVE MEMBER
&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
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

(Shri AV Haridasan, Judicial Member)

The applicants 6 in number while working as Casual Labourers in different places under the first respondent were by order dated 20.3.1988 appointed as substitute Khalasis in the scale of Rs.750-940 and were posted to Erode. In the order it was stated that the employees were eligible for all transfer privileges including TA. Having carried out the order of transfer, the applicants claimed and were paid the transfer allowance. Their present grievance is that while they were properly granted the eligible transfer allowance without issuing a notice and without stating any reason as to why it was being done, the Railway Administration has recovered from them the entire transfer allowance in 3 instalments. The applicants ^{have} stated that this

action is arbitrary and illegal and pray that the respondents may be directed to refund to them the transfer allowance recovered from them. They have stated that as Casual Labourers who had attained temporary status, they being entitled to many of the rights and privileges which ^{are} ~~is~~ admissible to temporary Railway employees, the provisions in the order at Annexure-A1 to grant them transfer allowance were perfectly in order and that there was no justifiable reason why the respondents should have taken a different view.

2. This application is resisted by the respondents. They have sought to justify the recovery of the transfer allowance already paid on the ground that the applicants not being regular employees but only casual labourers were not entitled to transfer allowance. There is also a passing remark that the transfer of the applicants being on their own volunteering, they are not entitled to get any transfer allowance even if they had been regular Railway Servants.

3. We have heard the learned counsel on either side and have also perused the documents produced.

4. Though the respondents in the reply statement have stated that the transfer of the applicants were on the basis of their volunteering, the respondents have not produced any document to show that any of the applicants made a request for transfer to Erode. Further, volunteers ^{ing} to be appointed as a substitute Khalasi is not the same as ^a requested ~~ed~~ for a transfer


to a particular place. Therefore, we do not find any merit in that contention. This Bench of the Tribunal had earlier considered the question whether casual labourers who had attained temporary status are entitled to be paid transfer allowance on their being transferred to a different place of work in OAK-519/88. In that case, advertng to the ruling of the Hon'ble (1988(1) SCC, 306) Supreme Court in Ramkumar & others V Union of India & others/ wherein the various rights and privileges to which the casual labourers who attained temporary status are entitled to have been enumerated, the Bench observed that when a Casual Labour who had attained temporary status is transferred to a distant place ^{out} of his headquarters, there is no justification to deny him the transfer allowance. We do not find any reason not to agree with this observation. The learned counsel for the respondents brought to our notice that against the order in OAK-519/88, the Railway Administration has filed an SLP before the Hon'ble Supreme Court, But he stated that no order of stay of operation of the above order has been issued. In the light of the provisions contained in Chapter 23 of the Indian Railway Establishment Mannual and the ruling of the Hon'ble Supreme Court in Ramkumar's case, we are of the view ^{that} ~~the~~ casual labourers who had attained temporary status are entitled to be paid the transfer TA if they are transferred to a distant place from the place of their work. If transfer allowance can be paid to a regular Railway employee who gets a regular and better scale of pay, we do not find any reason or justification to deny that benefit to a casual labour who is at the lowest rung

of service under the Railways.

5. In the conspectus of facts and circumstances, we allow the application and direct the respondents to refund to the applicants the transfer allowance recovered from them within a period of two months from the date of communication of this order. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER



(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

23-3-1992

trs