

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 396/91
~~XXXXXX~~

199

DATE OF DECISION 28.4.92

Elizabeth Mathew & others Applicant (s)

Mr Ashok M Cherian Advocate for the Applicant (s)

Versus

The Deputy Chief Engineer (Constn)
Southern Railway Respondent (s)
Ernakulam and others

Mr MC Cherian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The applicants are women mazdoors employed under the respondents. They had attained temporary status on various dates. They were granted the benefits of maternity leave for the various periods indicated in para 4 (iii) of the application and paid leave salary.

2 The respondents have, however, now issued the impugned Annexure A1 order dated 1.3.91 stating as follows:

" As per Rly. Bd's letter No.E(NG)II/89/CL/SE/11 dated 28.9.1989 female CL staff on Ty. status are not eligible for maternity leave. Accounts during their inspection of Accounts of this office in Nov. 1990 has also taken note of it and directed to recover the overpayment made on a/c of grant of M.L. in the following cases.

" Please therefore arrange to recover the overpayment made to the above staff for periods noted in instalments and advise the recovery particulars."

Received
28/5/92

Thus orders have been issued for recovery from 19 women employees, including the 9 applicants before us.

In other words, the leave salary given to them while they were actually on maternity leave, has been treated as an overpayment and recovery has been ordered.

3 The applicants have therefore, filed this application for the following reliefs:

- "(i) Call for the records leading to Annexure A1 and set aside the same so far as it affects the applicants.
- (ii) Declare that the applicants are entitled for maternity leave benefits which they have already availed.
- (iii) Direct the respondents not to recover the payments made to the applicants for the periods during which they availed the maternity leave."

4 Respondents have filed a reply stating that, in accordance with law, the applicants were not entitled to maternity leave, because there is no such provision in the Indian Railway Establishment Manual. It is stated that the demand raised by the various Federations of Railway Employees that temporary employees and casual labourers who attained temporary status should also be granted maternity leave was considered, and this facility has been extended for the first time by the Annexure R3 order dated 25.6.91 of the Railway Board. Therefore, the applicants are not entitled to any relief.

5 We have carefully considered the pleadings and heard the counsel. The simple question of law is, whether under the provisions of the Indian Railway Establishment Manual as applicable to casual labourers, who have

Q

attained temporary status, they were entitled to get maternity leave before Exbt. R-3 was issued.

6. The provisions relating to casual labourers on whom temporary status has been conferred are contained in para u 2511 of the Indian Railway Establishment Manual, clause (a) of which reads as follows:-

"Rights and privileges admissible to casual labour who are treated as temporary after completion of six months" service:-

"(a) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority, etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regular service."

u 7. That takes us to Chapter XXIII of the ^{Manual} Rule 2307 which deals with leave rules applicable to temporary Railway servants ^u which is as follows:-

"Leave Rules: A temporary railway servant under the Leave Rules, 1949 earns leave on average pay, only at the rate of 1/22 of the period spent on duty during the first year of service. On completion of one year's continuous service he becomes eligible for the leave terms applicable to permanent railway servants except that he will not be eligible for any "leave not due" i.e., he will begin to earn leave on average pay at the rate applicable to permanent railway servants only from the date on which the second year of service commences. He will, however, be eligible for leave on half average pay in respect of the first year of service at the rate applicable to permanent railway servants. A temporary railway servant serving in a Railway School will not be eligible for leave on average pay in respect of his first year of service."

Thus, the only provision of the rule applicable to permanent Railway Servants which has been applied to the temporary railway servants is that relating to leave on average pay and leave on half average pay. It is clarified that while in the first year, a temporary railway servant will earn leave on average pay at the rate of only 1/22 of the period spent on duty, thereafter, he gets the benefits available to permanent employees. Thus, thereafter, he earns leave at the rate of 1/11 of the period spent on duty, like permanent govt. servants. Similarly, he will be eligible

for leave on half average pay in the first year of service itself at the rate applicable to permanent government servants though this will not apply to a temporary railway servant in the Railway School. Under ~~the~~ ^{rule} 2511, ^(a) these are the rules which apply to casual labourers who have attained temporary status. We notice that these rules do not provide for maternity leave.

8. The learned counsel for the applicant stresses the underlined portion of the second sentence in the extract reproduced above. He contends that this is the authority for the proposition that all provisions relating to leave in respect of permanent employees will also apply to temporary employees and ~~leave~~ ^{hence,} under Rule 2511, to temporary status attained casual labourers ^{& also.} A proper interpretation of the provision, however, is that the ^{& full meaning of the} underlined portion of the sentence is given in the latter portion of that sentence following the expression "i.e.". The use of this expression "i.e." denotes that what follows it is what is meant by the portion preceding it.

9. Construed thus, it is clear that Rule 2307 has not application to the facts of the case and does not authorise ^{the} ~~to~~ ^{of} sanction, maternity leave.

10. In the circumstance, we find that contention raised by the applicants ^{is} has no force.

11. However, we are satisfied that this does not necessarily mean that the applicants are not entitled to any relief. After all, it was the respondents who sanctioned leave to the applicants on the basis of a wrong interpretation of the rules. Merely because the applicants have been paid leave salary during the period of their maternity leave, they cannot be treated as overpayments

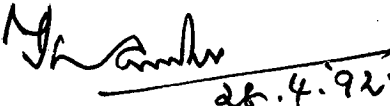
which are to be recovered in cash. Considering their poor status and ~~our certain belief~~ ^{the fact} that the leave salary would ^{be by them} have been spent ~~already~~ by now, we are of the view that recovery in cash should not be permitted. The ends of justice would be met if a portion of the maternity leave availed of earlier is adjusted in the leave account of the applicants.

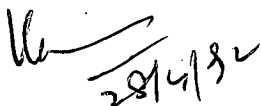
12. Hence, we dispose of this application with the following ^{declaration/direction}

(i) Prior to the issue of Ext. R3 instruction, casual labourers who had been granted temporary status were not entitled to maternity leave.

(ii) On the facts and in the circumstances of this case, we direct that 50 percent of the maternity leave availed of by the applicants, as stated in Annexure-A1, shall be adjusted against the earned leave standing to their credit at present and if it cannot be so adjusted, such leave shall be adjusted as a first charge against the leave earned in future until the adjustment is fully made.

13. There will be no order as to costs.


(N. Dharmadan)
Judicial Member
26.4.92


(N.V. Krishnan)
Administrative Member
28/4/92