

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.322/96

Date of order: 11.12.1996

1. Kolanchi A. Mate, S/o Shri Armugam.
2. Sellavel V, S/o Shri Veeraswamy
3. Rangaswamy, S/o Shri Umran
4. Kolanchi M, S/o Shri Munian
5. Subramaniyam K, S/o Shri Kannuswamy
6. Kaliyan N, S/o Shri Nadesar
7. Chinnapayan R, S/o Shri Rama
8. Anthoni Swamy A, S/o Shri Arogiswamy
9. Chinnapayam S, S/o Shri Subraya
10. Shri Samikkan S, S/o Shri Sundraram
11. Nauuala M, S/o Shri Motiya
12. Manikkavel M, S/o Shri Murga
13. Dhanpaliyam K, S/o Shri Kaliyan
14. Palai K, S/o Shri Koliyan
15. Saroja M, S/o Shri Manikan
16. Kasiyamma A, S/o Shri Annamalai
17. Selvam G, S/o Shri Gopal
18. Anthoiyamma M, S/o Shri Mathuswamy
19. Jaya P, S/o Shri Pandu
20. Maduramma K, S/o Shri Keswan
21. Kesa P, S/o Shri Panji
22. Vasanti C, S/o Shri Chellamuthu

All Gangmen serving with PWI(Survey & Construction)  
Phulera, Western Railway, Jaipur Division, Phulera.

Vs.

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Chief Project Manager, Western Railway, Jaipur Division, Jaipur.
3. Permanent Way Inspector (Survey & Construction) Western Railway, Jaipur Division, Phulera.

QW

4. Permanent Way Inspector (Survey & Construction)  
Western Railway, Jaipur Division, Hanakpura, Jaipur.

5. Chairman, Railway Board, Pail Bhawan, New Delhi.

...Respondents.

Mr.R.C.Gaur : Counsel for applicants

Mr.M.Bhandari : Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member.

PEP HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, the applicants named above have prayed that Phulera which is the residing place of the family members of the applicants may be declared as their Headquarters as long as they are retained in the Jaipur Division of the Western Railway or till they are absorbed on regular basis. They have further prayed that the applicants may be paid T.A and D.A for the period from September 1995 to November 1995 and March 1996 to May 1996 and further periods treating Phulera as their Headquarters. There is a still further prayer that para 2001 of the Indian Railway Establishment Manual (IPEM) providing for transfer of casual labours and the Railway Board's circular dated 16.1.92 circulated vide their letter dated 3.6.92 (Annxs.A1 and A2) may be declared as ultra vires of the Constitution.

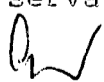
2. All the applicants have described themselves in the O.A as Gangmen serving with the PWI (Survey & Construction) Phulera in Jaipur Division of the Western Railway. Their case is that they are temporary status holders who were recruited in Rajkot Division in 1979. They were shifted to the Jaipur Division with Phulera as their Headquarters. They have their hutments along the Railway lines in Phulera where they are staying with their families since 1986 in the space provided

hw

6

by the Railway authorities. Their seniority is maintained in Jaipur Division. They were sent on temporary duty to various neighbouring places under different PWIs. As a result of that certain O.As had filed earlier and their Headquarters were fixed at Phulera and thereafter they were paid T.A and D.A. In the present case the applicants were sent to Kanakpura and from Kanakpura they were detailed to work at various places. T.A and D.A have been denied to them by treating Phulera as their Headquarters, for the periods from September 1995 to November 1995 and March 1996 to May 1996. For the intervening periods however they have been paid T.A & D.A. The problem has arisen because there is no system in the Railways for fixing the Headquarters of the casual labours like the applicants while ordering them to move to work from one place to another. They work along the Railway track and as the track progresses they move ahead. According to rules they are entitled to TA & DA when they are sent on duty to a place beyond 8 kms from their residence/Headquarters. It is, therefore, essential that the place where the applicants have been residing for such a long time be declared as their Headquarters as long as work is available in Jaipur Division or till they are absorbed in a regular basis.

3. Further according to the applicants, the Railways have been transferring them while invoking the provisions of para 2001 of the IFEM. The Railway Boards circular letter dated 16.4.92 sent vide their letter dated 3.6.92 (Annxs.A1 & A2) is supposed to contain interpretations of the said Rule. Contention of the applicants is that they are temporary status holders who have been working for 11 years and they do not fall within the definition of casual labour as referred to in para 2001 of the IFEM. Therefore, for all practical purposes they should be treated as temporary railway servants. If they are transferred from one place to another



they should be paid transfer allowances or if they are sent on temporary duty they should be paid TA & DA, considering their place of posting as their Headquarters. The provisions of para 2001 of the IPEM providing for the transfer of the casual labours is vague in as much as no circumstances under which the transfer can be effected have been mentioned therein and therefore, this provisions requires to be deleted. Accordingly, the clarificatory letter issued by the Railway Board is also required to be struck down. The present system by which their Headquarters are not fixed and they are moved from place to place without grant of any TA & DA amounts to their exploitation.

4. The respondents in their reply have denied that the applicants' Headquarters have been fixed at Phulera. The Head-quarters of the casual employees are fixed as per the administrative exigencies. The applicants were kept at Phulera till the work was available or at nearby places. Accordingly they were paid TA & DA in accordance with the rules. However, on nonavailability of work at Phulera the applicants have to be transferred from one place to another and on their transfer their Headquarter is fixed at the new place. As regards the payment of TA & DA to the applicants for the periods mentioned in the OA, the respondents have stated that they have already received the claims and these are being processed for necessary payment. They have denied that there is no system in the Railways regarding fixation of Headquarters, etc. Headquarters are shifted not frequently but depending on the availability of the work. Their Headquarters are not shifted along the track. Since 1986, the applicants have been paid TA & DA by treating Phulera as their headquarters and now it is only after almost 10 years that the applicants have been transferred and their headquarters have been changed. The allegation regarding the

aw

exploitation of the applicants has been denied. The applicants are temporary status holder casual labours and they cannot be treated as temporary railway servants because these two types of railway servants fall under two different categories. There is no proper basis indicated by the applicants for challenging the provision regarding transfer of casual labours. All railway servants can be transferred in the interest of administration. If any judgments have been delivered holding that the casual labour is not liable to be transferred, these have been delivered before the amendments of the provision by which a provision for transfer of the casual labours has been incorporated in the rules.

5. During the arguments the learned counsel for the applicants stated that since the applicants have been residing at Phulera for the last several years on the land provided by the Railways, Phulera should be treated as their Headquarters. If they are sent on temporary duty from Phulera to other places they should be paid TA & DA, according to the rules and if they are sent on transfer, they should be paid the transfer allowances as may be due to them. The present position by which they are denied either of these benefits leads to their exploitation.

6. The learned counsel for the respondents stated that the applicants are casual labours and are liable to transfer from one place to another depending upon the availability of work and such transfers are strictly according to rules. Para 2001 of the IREM now makes a provision for transfer of casual labours where required. However, where the applicants are sent on transfer from one place to another, transfer allowances are paid to them and where they are sent on temporary duty, TA & DA according to the rules are paid to them. The claims preferred by the applicants regarding payment of TA & DA are being processed and the amount due

AW

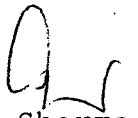
will be paid to them as per rule.

7. We have heard the learned counsel for the parties and have perused the material on record. No documents have been presented by the applicants to show that their present Headquarters are at Phulera. The Headquarters of the applicants would be the place to which they have been posted or transferred, be it Phulera or any other place. If from their Headquarters, i.e the place to which they have been posted or transferred and they are transferred to yet another place they would be entitled to transfer allowances, in accordance with the instructions issued by the Railways. If however they are sent on temporary duty from the place of their posting or from the place to which they have been transferred and the place of temporary duty lies outside a distance of 8 kms, they would be entitled to TA & DA in accordance with the rules. We direct the respondents to follow these instructions in the cases of the applicants and make payment to them in accordance with the above direction. The claims if any already preferred by the applicants may be processed and payment should be made accordingly. As regards para 2001 of the IPFM and the clarificatory circular issued by the Railway Board thereon, we refrain from expressing any view thereon in this O.A.

8. The O.A is disposed of accordingly at the stage of admission with the consent of the parties. No order as to costs.

  
(Ratan Prakash)

Judicial Member

  
(O.P.Sharma)

Administrative Member.