

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4612 of 2017

- =====
1. The Union of India through the General Manager, East Central Railway, Hajipur, District Vaishali, Bihar.
 2. The General Manager, (Personnel), East Central Railway, Hajipur, District - Vaishali, Bihar.
 3. The Chief Administrative Officer (Con.) East Central Railway, Mahendru Ghat, Patna, Bihar.
 4. The Financial Advisor & Chief Accounts Officer (Con.) East Central Railway, Mahendru Ghat, Patna, Bihar.
 5. The Dy. Chief Personnel Officer (Con.) East Central Railway, Mahendru Ghat, Patna, Bihar.
 6. The Deputy Chief Engineer (Con.) Ganga Bridge, East Central Railway, Digha, Patna, Bihar.
 7. The Senior Divisional Financial Manager, East Central Railway, Danapur, Bihar.

.... Petitioner/s

Versus

Md. Karar Husain, Son of Late Sharfuddin Ansari, Ex - Khalasi, Under Deputy Chief Engineer (Con.), Ganga Bridge, East Central Railway, Digha Ghat, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K.Sinha, Sr.Adv. Mr. Satyeshwar Prasad, Adv.
For the Respondent/s	:	Mr. M.P. Dixit, Adv. Mr. S.K. Dixit, Adv. Mr. Sanjay Kumar Chaubey, Adv. Mr. Shailendra Kumar, Adv. Mr. Sunil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 24-08-2017

Heard learned senior counsel for the Railways and
learned counsel for the private respondent.

The issue, which is required to be considered in the
present writ application, against the order dated 02.09.2016 passed in
O.A. No.234 of 2016, is limited to the concluding part of the order of



the Tribunal, which reads as under:-

“Accordingly, this OA is disposed of at the admission stage itself with a direction to the respondents to verify the facts related to the applicant and extend to them the same benefit as granted to similarly placed employee by treating 100% service as temporary status and 50% of service as casual for qualifying service for pension, if he is similarly situated with the above mentioned judgments as referred in the OA. The respondents shall comply with the above direction within a period of four months from the date of receipt of a copy of this order.”

The submission of the learned senior counsel for the Railways is that the law having been very recently explained and laid down in the case of **Union of India Vs. Rakesh Kumar reported in 2017(3) PLJR SC83** makes the direction of the Tribunal to treat 100% service in temporary status and 50% of service as casual for qualifying service for pension in the teeth of the ratio of the decision.

The Hon’ble Apex Court crystallized the issue in the following manner:-

“55. In view of foregoing discussion, we hold:

(i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularized on a regular/temporary post for the purposes of calculation of pension.

(ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

(iii) those casual workers who are appointed to any post either substantively or in officiating or in temporary



capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

(iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.”

If this be so, the period of work both as casual or temporary has to be treated 50/50 for purposes of calculating the qualifying service for pension.

Writ is allowed with the above modification to the order impugned dated 02.09.2016.

(Ajay Kumar Tripathi, J)

Arvind/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	
CAV DATE	
Uploading Date	25.08.2017
Transmission Date	

