

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5111 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.) East Central Railway, Rajgir, District - Nalanda, Bihar.
 7. The Senior Executive Engineer (Con.) East Central Railway, Rajgir, District - Nalanda, Bihar.

.... Petitioners

Versus

Binod Singh son of Genu Singh Ex-Jeep Driver-III, Under Deputy Chief Engineer Con. East Central Railway, Rajgir, District Nalanda, Bihar.

.... Respondent

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Appearance :

For the Petitioners	:	Mr. D.K. Sinha, Sr. Advocate
		Mr. Satyeshwar Prasad, Advocate
For the Respondent	:	Mr. Gautam Saha, Advocate

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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: 24-07-2017

Heard learned Senior counsel for the
petitioners and learned counsel for the private



respondent.

The decision of the Central Administrative Tribunal (hereinafter referred to as the “Tribunal”), Patna Bench, Patna dated 4th October, 2016 is subject matter of challenge before this Court. It is the direction issued in paragraph 10 of the said order, which is the bone of contention, which reads as under:

“10. Accordingly, the OA is allowed. The respondents are directed to count 100% period rendered under Temporary Status from 01.01.1981 and 50% service rendered as casual labourer from 01.12.1972 along with the 100% period after regularization till the date of superannuation and thereafter to revise the entire pensionary benefits and make payment of arrears thereof with interest @ 8% p.a. with all consequential benefits within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.”

The learned Senior counsel representing the Railways submits that in view of a very recent decision of Hon’ble Apex Court rendered in the case of ***Union of India Vs. Rakesh Kumar*** since reported in ***2017 (3) PLJR SC 83***; the very gamut of the dispute as well as judgments of conflicting kind passed from time to time was considered by the Division Bench in detail. The Court has explained those decisions and



to harmonize and bring about uniformity in relation to grant of benefit of pension for casual or temporary status employees working in the Railway, by crystallizing its view in concluding part of the said decision. The ratio of the said decision of the Hon'ble Apex Court is reproduced hereinbelow:-

"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 is what has been held by the Hon'ble Apex Court in the decision rendered on 24.03.2017 with regard to the calculation or reckoning of period of casual as well as temporary status employees, which has been fixed at 50% for casual and 50% for temporary status, the order of the Tribunal seems to be contrary to the above legal view. Therefore, to harmonize and to further rule out further confusion which the Tribunal may commit in passing further orders in similar dispute, the impugned order dated 4th October, 2016 passed in O.A. No. 645/2015 is set aside. The benefit of pension for the casual period and temporary status will be calculated on 50/50 basis and pension will accrue accordingly.

The stand of the counsel for the private respondent is that even in the latest decision of the Hon'ble Supreme Court, not all decisions of the Hon'ble Apex Court, has been taken into consideration nor was the circular of the Railway Board taken into consideration.

Such a submission is required to be rejected on perusal of the order of the Hon'ble Apex



Court in the case of **Union of India Vs. Rakesh Kumar** (supra) because the effort of the Hon’ble Apex Court is to harmonize diverse opinions which has been vexing the courts, the time has come when the harmony sought to be restored by the Hon’ble Apex Court be implemented.

The impugned order dated 04.10.2016 passed in O.A. No. 645/2015 is set aside and the writ application stands allowed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.07.2017
Transmission Date	N.A.

