

\$~16 to 30 & 32 to 49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

- + W.P.(C) 4148/2015 & CM No.7522/2015
- + W.P.(C) 9138/2014 & CM No.20816/2014
- + W.P.(C) 7711/2015 & CM No.15117/2015
- + W.P.(C) 8363/2015 & CM No.17747/2015
- + W.P.(C) 8365/2015 & CM No.17750/2015
- + W.P.(C) 8645/2015 & CM No.18870/2015
- + W.P.(C) 8952/2015 & CM No.20127/2015
- + W.P.(C) 8953/2015 & CM No.20129/2015
- + W.P.(C) 9806/2015 & CM No.23587/2015
- + W.P.(C) 10073/2015 & CM No.24676/2015
- + W.P.(C) 11237/2015 & CM No.29280/2015
- + W.P.(C) 11274/2015 & CM No.29467/2015
- + W.P.(C) 11909/2015 & CM No.31632/2015
- + W.P.(C) 12017/2015 & CM No.31873/2015
- + W.P.(C) 12107/2015 & CM No.32182/2015
- + W.P.(C) 144/2016 & CM No.667/2016
- + W.P.(C) 1677/2016 & CM No.7211/2016
- + W.P.(C) 1954/2016 & CM No.8421/2016
- + W.P.(C) 1975/2016 & CM No.8505/2016
- + W.P.(C) 2642/2016 & CM No.11197/2016
- + W.P.(C) 2646/2016 & CM No.11209/2016
- + W.P.(C) 4278/2016 & CM No.18055/2016
- + W.P.(C) 4630/2016
- + W.P.(C) 8029/2016 & CM No.33315/2016
- + W.P.(C) 8090/2016 & CM No.33545/2016
- + W.P.(C) 8091/2016 & CM No.33547/2016
- + W.P.(C) 8111/2016 & CM No.33584/2016
- + W.P.(C) 9319/2016 & CM No.37504/2016
- + W.P.(C) 11710/2016 & CM No.46114/2016
- + W.P.(C) 12048/2016 & CM No.47631/2016
- + W.P.(C) 1501/2017 & CM No.6832/2017
- + W.P.(C) 5686/2017 & CM No.23754/2017
- + W.P.(C) 6786/2017 & CM No.29262/2017

UOI AND ORS.

..... Petitioners

Through: Mr.VSR Krishna and Mr.Subhosh Kumar
Kaushik, Advocates in W.P.(C) 12107/2015.

Mr.J.K.Singh, Standing Counsel with Mr.Ranjit Kumar,

53

Advocate in W.P.(C) 4148/2015, 7711/2015, 8363/2015, 8365/2015, 8645/2015, 8952/2015, 8953/2015, 9806/2015, 11237/2015, 11274/2015, 144/2016, 2642/2016, 2646/2016, 12048/2016, 5686/2017 and 6786/2017.

Ms.Rashmi Malhotra and Mr.Himanshu Kaushik, Advocates in W.P.(C) 9138/2014, 11909/2015 and 12017/2015.

Mr.Ashok Singh, Advocate in W.P.(C) 1677/2016, 1975/2016, 9319/2016, 11710/2016 and 1501/2017.

Mr.Jagjit Singh, Ms.Rashmi & Mr.Narayan Dev Parashar, Advocate for Railways in W.P.(C) 9138/2014.

Mr.Om Prakash, Advocate in W.P.(C) Nos.1954/2016, 4278/2016, 4630/16, 8029/2016, 8090/2016, 8091/2016, 8111/2016.

Versus

PALEY RAM AND ORS.	 Respondents
RAM SARAN	 Respondent
PIARA SINGH	 Respondent
BISHAMBER	 Respondent
RAM CHANDRA AND ORS	 Respondents
ASHOK KUMAR AND ORS	 Respondents
RAM BADAN AND ORS.	 Respondents
SUBHASH CHANDER SHARMA & ORS.	 Respondents
SOMPAL SINGH & ORS	 Respondents
SUDAMA	 Respondent
RAJ SINGH KHOKHAR	 Respondent
ARJUN	 Respondent
RAKESH KUMAR	 Respondent
RAJENDRA PRASAD	 Respondent
SATYA PRAKASH & ORS.	 Respondents
GURMAIL SINGH	 Respondent
NAFEY SINGH	 Respondent
OM PRAKASH	 Respondent
SUBHASH DHAR	 Respondent
INDER	 Respondent
RAM KISHAN	 Respondent
ASHOK SINGH	 Respondent
SUBE SINGH	 Respondent
MANGE RAM	 Respondent
NAND LAL	 Respondent

hm

RAM ASHRAY	 Respondent
DAYA NAND	 Respondent
AMAR CHAND	 Respondent
BABOO LAL & ORS	 Respondents
VIJENDER KUMAR & ANR.	 Respondents
RAJVEER SINGH	 Respondent
SHAKUNTALA SARASWAT	 Respondent
RAJENDER PRASAD	 Respondent

Through : Mr. Abhay Dixit, Adv. with Mr. Kuldeep Singh,
Adv. for R-1 in WP (C) No. 5686/2017.

Mr. A.P. Nagrath, Advocate in W.P.(C) 4148/2015

Mr. H.P. Chakravarti and Mr. P.S. Khare, Advocates in
W.P.(C) 8645/2015, 11909/2015, 12017/2015, 12107/2015,
1954/2016, 12048/2016, 1501/2017 and 6786/2017.

Mr. M.S. Reen, Advocate in W.P.(C) 144/2016.

Mr. Sushil Thakur, Advocate in W.P.(C) 5686/2017.

Mr. Rajeshwar Singh, Advocate in W.P.(C) 10073/2015.

Mr. A.K. Trivedi and Mr. Naveen Kumar, Advocates in W.P.(C)
9138/2014, 7711/2015, 8363/2015, 11274/2015, 1677/2016,
2642/2016, 2646/2016, 8111/2016 and 11710/2016.

Mr. Anish Kumar, Adv. with Mr. Praveen Kumar Sharma, Adv.
for respondent in WP (C) No. 4148/2015.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

14.08.2018

1. By this common order, we propose to dispose of all the connected matters filed by the petitioners/Northern Railways, being aggrieved by the orders passed by the Tribunal, directing them to consider the claims of the respondents for counting half of their casual service and the entire temporary service, in addition to their service after absorption in regular employment as qualifying service for grant of pension and benefits of the ACP/MACP Scheme to them.

WS

2. Learned counsel for the parties state in unison that the orders passed by the Tribunal as impugned in these petitions, are premised on the order dated 27.08.2014 passed in OA no.2632/2013 entitled ***Lankush Singh vs. Union of India & Ors.*** We may note that the order passed in the case of ***Lankush Singh (supra)*** and extracted in the impugned order dated 26.09.2014, is based on the judgment of the Division Bench of the Andhra Pradesh High Court in the case of ***General Manager, South Central Railways vs. Shaik Abdul Khader, [(2004) 1 SLR 214]***. Vide order dated 27.08.2014, the Tribunal had directed the petitioners herein to count 50% of the casual service and 100% of the temporary service rendered by the respondent along with his entire service as a regular employee till the date of his superannuation for the purposes of calculating his pension. As far as the claim of ACP/MACP benefit is concerned, the petitioners were directed to consider the same after re-fixing the respondent's qualifying service and granting the same to him from the due dates, if he was found so eligible.

3. Learned counsel for the parties state that much water has flown under the bridge since the impugned judgment was pronounced by the Tribunal, inasmuch as the entire issue has been examined threadbare by the Supreme Court in a recent decision in the case of ***Union of India & Ors. vs. Rakesh Kumar & Ors. [2017 (4) SCALE 16]***, wherein after examining the decision of the Andhra Pradesh High Court in the case of ***Abdul Khader (supra)*** and another judgment dated 01.05.2009 of a Coordinate Bench of the Andhra Pradesh in the case of ***General Manager, South Central Railways, Secunderabad vs. A. Ramana, W.P.(C)No. 10838/2001***, the Supreme Court had framed the following issue:-

“Whether the entire services of a casual worker after obtaining temporary status till his regular absorption on a post is entitled to be reckoned for pensionary benefit or

5/6

only 50 per cent period of such service can be reckoned for pensionary benefit?"

4. On the aspect of reckoning 50% of the service as casual labour, it was observed by the Supreme Court that there was no challenge to the same, as it was in accordance with Rule 31 of the Railways Services (Pension) Rules, 1993, and it was further observed that the benefit of the said 50% service of casual period has already been extended to the respondent therein. Coming to the other aspect that was with regard to counting 50% of service after grant of temporary status, for purposes of pensionary benefit, the Supreme Court held as follows:-

"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 regularised 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

57

any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993."

5. Learned counsel for the parties state in unison that in so far as the issue of reckoning the periods of service as a casual labour, period of service after grant of temporary status and the period of regular service is concerned, for the purposes of pensionary benefits, the matter now stands finally settled and there is no dispute on this aspect.

6. Coming to the release of ACP and MACP benefits, learned counsel for the parties have drawn our attention to R.B.E. No.215/2009 which reads as follows:-

"R.B.E. No.215/2009

Subject: Extension of the benefit of MACP Scheme to the reckon 50% of the Temporary Status casual labour service.

Please refer to Board's letter of even number dated 10.06.2009 regarding the Modified Assured Career Progression Scheme (MACPS).

2. The issue regarding extension of the scope of the MACP Scheme so as to count 50% of temporary status casual labour service on absorption in regular employment for the purpose of grant of benefit under the MACP had been under consideration.

3. The matter has been examined and it has been decided that 50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 10, 20 and 30 years for the grant of benefit under the MACP Scheme on the analogy that the same is also reckoned as qualifying service for pension.

4. This issue with the concurrence of the Finance

48

Directorate of the Ministry of Railways."

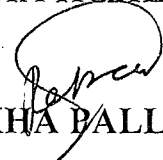
7. It is submitted by learned counsel for the petitioners that for the purposes of extending the benefits under the MACP Scheme, 50% of the temporary status of a casual labour shall be counted till his absorption in the regular employment. The said submission is supported by learned counsels for the respondents who state that there is no dispute on this issue as well.

8. This being the position, all the impugned orders are quashed and set aside. The present petitions are disposed of with a direction to the petitioners to re-calculate the pensionary benefits of each of the respondents in terms of the judgment of the Supreme Court in the case of Rakesh Kumar (supra). Further, the benefit of the ACP/MACP Scheme shall be calculated in each case on the basis of the circular referred to above namely, R.B.E. No.215/2009 by counting 50% of service after grant of temporary status to the respondents, in addition to the length of service after grant of regular appointment. The entire process shall be completed by the petitioners within three months from today and the arrears shall be paid to the respondents within two months therefrom along with a computation.

9. Parties are left to bear their own expenses.



HIMA KOHLI, J.



REKHA PALLI, J.

AUGUST 14, 2018

aa