

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16637 of 2019

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, Mahendrughat, Patna, Bihar.
4. The Financial Advisor and Chief Accountants Officer(CON), East Central Railway, Mahendrughat, Patna, Bihar.
5. The Dy Chief Personnel Officer(CON), East Central Railway, Mahendrughat, Patna (Bihar).
6. The Deputy Chief Engineer(CON), East Central Railway, Dhanbad.
7. The Deputy Chief Engineer(CON), East Central Railway, Hajaribagh.
8. The Deputy Chief Engineer(CON), East Central Railway, Barkakana.
9. The Deputy Chief Engineer(CON), East Central Railway, Rajgir, Nalanda.
10. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.
11. The Deputy Chief Engineer(CON), East Central Railway, Patna, Bihar.

... .. Petitioner/s

Versus

1. Brahmdeo Mistry Son of late Indradeo Mistry, Ex Mate (Works), Under Deputy Chief Engineer(CON), Dhanbad, Resident of Village- Simari Kala, Post- Hariharganj, P.S. Kutumba, District- Aurangabad, Bihar.
2. S.K. Kanjilal Son of late Lalit Mohan Kanjilal, Ex Driver, under Deputy Chief Engineer(CON), East Central Railway Dhanbad, Resident of Bishunpur, District- Dhanbad.
3. Nakul Pandey, Son of late Rameshwar Pandey, Ex Clerik Under Deputy Chief Engineer(CON), East Central Railway, Hazaribag, Resident of Village- Hirapur, Post- Singdaha, District- Dhanabad.
4. Govind, Son of late Madhusudan, Ex Survey Khalasi, Gomoh under Deputyb Chief Engineer(CON), East Centraol Railway, Dhanbad, Resident of Village- Bhendra Tola Rajatand, Post- Bhendra , District- Bokaro.
5. Gangadhar, Son of late Rathu, Ex Cleaner Under Deputy Chief Engineer(CON), East Central Railway, Dhanbad, Resident of Village- Saragdih, Post- Sondimra, District- Ramgarh.
6. Fagoo, Son of late Shanichar, Ex Mate(Works), Under Divisional Engineer(CON), East Central Railway, Kodarma Resident of Village- Bhendra Tola Rajatand, Post- Bhendra, District- Bokaro.
7. Rama Son of late Nem Chand, Ex Tackman, Under Deputy Chief Engineer(CON), East Central Railway, Barkakana, Resident of Village- Beko, Post- Beko, District- Giridih.
8. Bhairo, Son of late Sadhu, Ex Khalsi Under Deputy Chief Engineer(CON),



- East Central Railway Hazaribagh, Resident of Village- Bhendra Tola Rajatand, Post- Bhendra, District- Bokaro.
9. Vijay Kumar Singh, Son of late Mahabir Singh, Ex Mate (Works), Under Deputy Chief Engineer(CON), East Central Railway, Hazaribagh, Resident of Village- Panjari Kala, Post- Lalgarh, District- Palamu.
 10. Kamruddin, Son of late Ziralli Mahrum, Ex Messian, Under Deputy Chief Engineer(CON), East Central Railway, Dhanbad, Resident of Village- Chandwa, Post- Chandwa, District- Latehar.
 11. Gangeshwar Singh, Son of late Parmeshwar Singh, Ex Mate (Works) Under Section Engineer(W) CON, Dehri-On-Son, Resident of Village- Panjari Kala, Post- Lalgarh, District- Palamu.
 12. America Raut, Son of late Sheo Nandan Raut, Ex Clerk Under Deputy Chief Engineer(CON), East Central Railway, Hazaribagh, Resident of Village- Shyam Nagar, Post- Bhuli, District- Dhanbad.
 13. Rathindra Nath Jha, Son of late Shambhu Nath Jha, Ex Trackman under Deputy Engineer(CON), East Central Railway, Dhanbad, Resident of Village- Sabore, Post- Sabore, District- Bhagalpur.
 14. Chandradeep Son of late Laloo, Ex Blacksmith, Under Deputy Chief Engineer(CON), East Central Railway, Rajgir (Nalanda), Resident of Village- Panjari Kala, Post lalgarh, District- Palamu.
 15. Harihar, Son of late Rameshwar, Ex Mate Under Deputy Chief Engineer(CON), East Central Railway, Dhanbad, Resident of Village- Murmakhurd, Post- Murma Kala, District- Palamu.
 16. Mahbir Prasad, Son of late Moti Prasad, Ex Mate(Works), Under Deputy Chief Engineer(CON), East Central Railway, Hazaribagh, Resident of Village/Post- Jardih Bazar, District- Bokaro.
 17. Manjay Son of late Ashirbad, Ex Trackman Under Deputy Chief Engineer(CON), East Central Railway, Dhanbad, Resident of Village- sarakdih, Post- Sondimra, District- Bokaro.
 18. Subash Chandra Srivastava, Son of late N.C. Srivastava, Ex Head Typist Under Chief Administrative Officer(CON), East Central Railway, Mahendrughat, Patna, Resident of Harakhpura, Post- Barthi, District- Deoria, U..P
 19. Ram Bilash Thakur, son of late Sone lal Thakur, Ex Senior Clerk Under Chief Administrative Officer(CON), East Central Railway, Mahendrughat, Patna, Resident of Village/Post- Damu, District- Madhubani.
 20. Kapildeo Thakur, Son of late Jagdeo Thakur, Ex Mate(Works), under Deputy chief Engineer (CON), East Central Railway, Hazaribagh, Resident of Village- Chhotaki Amar, Post Gosaimathh, District- Nalanda.
 21. Ram Badan, Son of late Tapeswar , Ex Trackman, Under Chief Administrative Officer(CON), East Central Railway, Mahendrughat, Patna, Resident of Village- Salakhani, Post Murma Kala, District- Palamu.
 22. America Son of late Nanhu, Ex Trackman, Under Deputy Chief Engineer(CON), East Central Railway, Patna, Resident of Village- Lahar Banjari, Post - Untari Road, District- Palamu.
 23. Hardeo Prasad, Son of late Barhan Sahu, Ex Mate (Works), under Deputy



Chief Engineer(CON), East Central Railway, Dhanbad, Resident of Barkute,
Post- Sardhu, Koyed, District- Chatra.

24. Ram Autar Mistry, Son of late Damari Mistry, Resident of Village- Lahar
Banjari, Post- Untari Road, District- Palamu, Ex Hamerman, Under Deputy
Chief Engineer(CON), East Central Railway, Rajgir, Nalanda, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.D.K. Sinha, Sr. Adv.
: & Mr. Satyeshwar Prasad, Adv.
For the Respondent/s : Mr. Munna Pd Dixit (M.P. Dixit)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 14-09-2020

The proceedings of the Court are being conducted
through Video Conferencing and the Advocates joined the
proceedings through Video Conferencing from their residence.

Heard learned counsel for the petitioners and learned
counsel for the Respondents.

Petitioners have prayed for following reliefs:-

1. "For setting aside the order dated 17.05.2016
passed in O.A. No. 318 of 2016 by the learned
CAT, Patna whereby and whereunder the
original application filed by the applicants
(respondents, herein) has been disposed of at the
admission stage itself with a direction to the
respondents (petitioners herein) to verify the
facts related to each 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 causal



for qualifying service for pension. 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; and

(ii) for setting aside the subsequent order dated 15.05.2019, passed in R.A. No. 06 of 2017, by the learned Central Administrative Tribunal, Patna Bench, Patna whereby and whereunder the review application filed by the applicant (original respondents & petitioners herein), for review of the aforementioned order dated 17.05.2016, passed in O.A. No. 318 of 2016, by the learned Central Administrative Tribunal, Patna Bench, Patna, (hereinafter called learned CAT, Patna) has been dismissed by disregarding the principle of law decided by the Hon'ble Supreme Court, in the case of Union of India Vs. Rakesh Kumar" reported in 2017(1) PLJR SC 83, regarding counting of temporary/casual service, according to which the period of casual service as well as temporary status service is to be reckoned 50% for the purpose of pension.

(iii) Consequently, allow this writ petition, in terms of the judgment passed by the Hon'ble Supreme Court in the case of Union of India Vs. Rakesh Kumar" reported in 2017(1) PLJR SC 83, which has already been followed by the co-ordinate Bench of this Court in the case of C.W.J.C. No. 5111/2017 "Union of India Vs. Binod Singh" and C.W.J.C. No. 4612/2017 "Union of India Vs. Md. Karar Husain" by which the Hon'ble Court has directed that the period of work, both as casual or temporary has to be treated 50/50 for purposes of calculating the qualifying service for pension.



(iv) For grant of any other relief(s), as this Court may deem fit and proper in the facts and circumstances of this case.”

The counsel representing the petitioner/railways submits that 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 makes the direction of the tribunal to count 100% service as temporary status employee and 50% of service as casual employee for qualifying service for grant of pension in the teeth of 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.”

In view of judgment and order passed by the Apex Court as referred above and followed by this Court in C.W.J.C. No. 4612 of 2017 (Union of India and others Vs. Md. Karar Husain) order dated 24.08.2017 and in C.W.J.C. No. 5111 of 2017 (Union of India and others Vs. Binod Singh) order dated 24.07.2017, the judgment and order of the tribunal is modified to the extent that 50% of service rendered as temporary status employee and 50% of service rendered as casual employee will



be counted for the purpose of qualifying service for grant of pension.

With aforesaid modification, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2020
Transmission Date	NA

