

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18261 of 2019

1. The Union of India through the General Manager, East Central Railway, Hajipur Distt- Vaishali, Bihar.
2. The General Manager(Personnel), East Central Railway, Hajipur, Distt.- Vaishali, Bihar.
3. The Chief Administrative Officer(Con), East Central Railway, Mehendrughat, Patna, Bihar.
4. The Financial Advisor and Chief Accounts Officer, (Con), East Central Railway, Mehendrughat, Patna, Bihar.
5. The Deputy Chief Personnel Officer(Con), East Central Railway, Mehendrughat, Patna, Bihar.
6. The Deputy Chief Engineer(Con), East Central Railway, Dehri-On-Son, Distt. Sasaram, Bihar.
7. The Deputy Chief Engineer (Con), East Central Railway, Dhanbad.
8. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.
9. The Senior Divisional Financial Manager, East Central Railway, Mughalsarai.

... .. Petitioner/s

Versus

1. Devendra Nath Choubey Son of late Bateshwar Choubey, O/O the Deputy Chief Engineer (Con), East Central Railway, Barkakana, Under Chief Administrative Officer (Con), Mahendrughat, Patna(Bihar)- 800004.
2. Shiv Nath, Son of Raj Kumar Ex- Material Clerk, Under Deputy Chief Engineer(Con), East Central Railway, Dehri-On-Son, Dist- Sararam , Bihar- 821307.
3. Baban Mahto, Son of late Keshwar Mahto, Ex- Messon under Deputy Chief Engineer(Con), East Central Railway, Dehri-On-Son, Distt. Sasaram, Bihar- 821307.
4. Md. Atiullah Ansari, Son of Budhu Ansari, Ex- Shuntman, Under Deputy Chief Engineer (Con), East Central Railway, Dehri-On-Son, Distt. Sasaram, Bihar- 821307.
5. Ran Vijay Singh, Son of late Rambyash , Ex- Chowkidar, Under Deputy Chief Engineer (Con), East Central Railway, Dehri-On-Son, Distt. Sasaram, Bihar- 821307.
6. Ram Deo, Son of late Mahadeo, Ex- Trackman, O/O Executive Engineer(Con), Arrah, Under Deputy Chief Engineer(Con), East Central Railway , Dehri-On-Son, Distt. Sasaram(Bihar), 821307.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.D.K. Sinha, Sr. Adv.
: & Mr. Dr. Anand Kumar, Adv.



For the Respondent/s : Mr.Munna Pd Dixit (M.P. Dixit), Adv.

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 issuance of a writ in the nature of certiorary and order/orders, direction/directions for setting aside the order dated 07.09.2016 passed in O.A. No. 648/2016 and order dated 28.05.2019 passed in R.A. No. 17/2017, whereby the learned Tribunal has extended the benefits to the respondents/applicants by counting the 100% period of service, served as temporary status and 50% of service of the period served as casual basis for qualifying service of pension, contrary to the matter decided in Civil Appeal No. 3938/2017 by the Hon'ble Supreme Court of India and also contrary to the judgment dated 24.07.2017 and



24.08.2017 decided in C.W.J.C. No. 5111/2017 and C.W.J.C. No. 4612/2017 by this Court. Further the learned tribunal has also dismissed the review application no. 17/2017 without considering the crux of the above judgments.”

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)

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

