

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20855 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 Accounts Officer (Con.), East Central Railway, Mahendrughat, Patna (Bihar).
5. The 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, Rajgir, District- Nalanda (Bihar).
8. The Deputy Chief Engineer (Con.), East Central Railway, Danapur, District- Patna (Bihar).
9. The Chief Administrative Officer (Con.), East Central, Kolkata.
10. The Deputy Chief Engineer (Con.), East Central Railway, Sealdah.
11. The Senior Divisional Personnel Officer, Eastern Railway, Malda.

... .. Petitioner/s

Versus

1. Jagdish, Son of Late Sukhi, Resident of Village and Post- Meral, District- Garhwa, Ex Trackman under Deputy Chief Engineer (Con.), East Central Railway, Rajgir, District- Nalanda (Bihar).
2. Nizamuddin, Son of Late Sakurlla, Resident of Village and Post- Meral, District- Garhwa, Ex-Works Mate under Deputy Chief Engineer (Con.), East Central Railway, Hazaribagh.
3. Nizamuddin, Son of Late Dosu Shaikh, Resident of Village and Post- Meral, District- Garhwa, Ex-Works Mate under Deputy Chief Engineer (Con.), East Central Railway, Sealdah.
4. Mukhlal, Son of Late Ramkishoon, Resident of Village and Post- Meral, District- Garhwa, Ex- Gangman under Section Engineer (P/Way), East Central Railway, Singraulli under Dhanbad Division.
5. Ram Nandan, Son of Late Maheshwar, Resident of Village- Sangbaria, Post- Meral, District- Garhwa, Ex- Gangman under Section Engineer (P/Way), East Central Railway, D.T.O., under Dhanbad Division.
6. Salauddin, Son of Late Sakrullah, Resident of Village and Post- Meral, District- Garhwa, Ex- Gangman under Section Engineer (P/Way), East Central Railway, Singraullu under Dhanbad Division.
7. Sahabuddin, Son of Late Sakrullah, Resident of Village and Post- Meral, District- Garhwa, Ex- Khalasi Helper under Junior Engineer (Works), East Central Railway, Chopan under Dhanbad Division.



8. Doman, Son of Late Sahdeo, Resident of Village and Post- Meral, District- Garhwa, Ex-Keyman under Senior Section Engineer (P/Way), East Central Railway, Japla under Dhanbad Division.
9. Shankar Ram, Son of Late Doman Ram, Resident of Village and Post- Meral, District- Garhwa, Ex- Technician-I under Section Engineer (Elect.), East Central Railway, Gajandi under Dhanbad Division.
10. Udit Ram, Son of Late Raghunath, Resident of Village and Post- Meral, District- Garhwa, Ex- Leverman, under Station Master, East Central Railway, Mirchadhuri under Dhanbad Division.
11. Md. Jasemuddin, Son of Late Md. Diliyan Seakh, Resident of Village and Post- Meral, District- Garhwa, Ex- Trackman under Section Engineer (P/Way), East Central Railway, BNJ under Sealdah.
12. Sukhari, Son of Late Kodu, Resident of Village and Post- Meral, District- Garhwa, Ex- Khalasi under Deputy Chief Engineer (Con.), East Central Railway, Rajgir.
13. Rafiaque, Son of Late Nabir, Resident of Village and Post- Meral, District- Garhwa, Ex- Trackman under Section Engineer (P/Way), East Central Railway, Jamalpur under Malda Division.
14. Bhola, Son of Late Govind Ram, Resident of Village-Obra, Post- Harigana, District- Garhwa, Ex- Technician-I, under Senior Section Engineer (C and W), East Central Railway, Barwahdih under Dhanbad Division.
15. Brichh Ram, Son of Late Janki, Resident of Village- Sangbaria, Post- Meral,, District- Garhwa, Ex- Technician under Senior Section Engineer (C and W), East Central Railway, Patrat under Dhanbad Division.
16. Lalmuni Devi, Wife of Late Budhan, Resident of Village-Tonar, Post- Latdag, District- Garhwa, Ex- Trackman, under Deputy Chief Engineer (Con.), East Central Railway, Danapur, District, Patna (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate
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:-

“For issuance of an appropriate writ or writs, preferably in the nature of certiorary for quashing the order dated 04.07.2019 passed in R.A. No. 12/2017 and order dated 30.06.2016 passed in O.A. No. 452/2016, by the learned C.A.T., Patna Bench, whereby and where under the learned Tribunal has directed the petitioner to extend the benefit to the respondents/applicants by treating their 100% service as temporary status and 50% service as casual for qualifying service of pension. The learned C.A.T. has passed this order contrary to the judgment passed by the Hon’ble Apex Court in the matter of Union of India and others Vs. Rakesh Kumar and others.”

The counsel representing the appellant/railway 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

