

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22606 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 Accountant 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), Ganga Bridge , East Central Railway, Mughalsarai.
7. The Deputy Chief Engineer(Con), East Central Railway , Dehri-On-Son, District- Rohtas, Bihar.
8. The Deputy Chief Engineer(Con), East Central Railway, Danapur, District- Patna.
9. The Senior Divisional Financial Manager, East Central Railway, Mughalsarai.
10. The Chief Administrative Officer(Con), East Central Railway Howrah.
11. The Deputy Chief Engineer(Con). East Railway, Howrah.
12. The Deputy Chief Engineer(Con). East Central Railway, Rajgir, Nalanda, Bihar.

... .. Petitioner/s

Versus

1. Mandish Son of late Bangali , Ex Cleaner, Resident of Village/Post- Silidag, District- Garhwa, Under Deputy Chief Engineer(Con), Dehri-On-Son, District- Rohtas, Bihar, 822128.
2. Hira Prasad Bishwakarma, Son of late Ram Lagan Bishwakarma, Resident of Village- Tadwa, Post- Tadwa, District- Garhwa, Ex- Material Clerk, Under Deputy Chief Engineer(Con), Dehri-On-Son, District- Rohtas, Bihar, 822124.
3. Kameshwar Singh, Son of late Muneshwar Singh, Resident of Village/Post- Meral, District- Garhwa, Ex- Sotremam, Resident of Village- Tadwa, Post- Tadwa, District- Garhwa, Ex- Material Clerk, Under Deputy Chief Engineer(Con), Dehri-On-Son, District- Rohtas, Bihar, 822114.
4. Dharmu Mahto, Son of late Khaderan Mahto, Ex- Material Clerk, Under Deputy Chief Engineer(Con). East Central Railway, Mughalsarai, Resident of Village- Murma Khurd, Post- Murma, Kala, District- Palamau, 822124.
5. Rameshwar Son of late Kewal, Resident of Village- Meral, District- Garhwa, Ex- Trackman, Under Deputy Chief Engineer (Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.



6. Musafir Yadav, Son of late Amaru Yadav, Ex Motar Driver Under Deputy Chief Engineer(Con). Dehri-On-Son, District- Rohtas, Bihar, 821307.
7. Ram Lakhan Son of late Dewaki, Resident of Aghauri, Post- Banka, District- Garhwa, Ex Carpenter, Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822124.
8. Laxaman Son of late Nand Kishore, Resident of Aghauri, Post Banka, District- Garhwam, Ex Carpenter, , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822124.
9. Ishaque, Son of late Imamam, Resident of Village/Post- Meral, Ex- Trackman, , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822124.
10. Shyam Lal Mahto, Son of late Mahadeo Mahto, Resident of Village- Haskar, Post- Soh, District- Garhwa, Ex- Trackman, , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
11. Ram Kuwer, Son of late Tapeswar, Resident of Village/Post- Meral, District- Garhwa,, Ex Mate, , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
12. Mainuddin, Son of late Roj Mohammad, Resident of Village/Post- Meral, District- Garhwa,, Ex Trackman , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
13. Gulampir, Son of late Malang, Resident of Village/Post- Meral, District- Garhwa,, Ex Trackman , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
14. Hari Ram, Son of late Ganesh Ram, Resident of Village/Post- Rehala, District- Palamu, Ex Chowkidar, Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
15. Dharman, Son of late Butani, Resident of Village- Tadwa, Post- Tadwa, District- Garhwa,, Ex Trackman , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822124.
16. Nijabuddin, Son of late Samsuddin, Resident of Village/Post- Meral, District- Garhwa,, Ex Trackman , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 822114.
17. Sudhir Kumar Das, Son of late K.R. Das, Ex Materialn Clerk Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 821307.
18. Bhikhari, Son of late Yadav, Resident of Village- Ramjani Bigha, Post- Rehala, District- Palamu, Ex Trackman, Under Deputy Chief Engineer(Con), Danapur, District- Patna, Bihar, 822124.
19. Sukhari Mistry, Son of late Butan Mistry, Resident of Village/Post- Singsigi, District- Palamu, Ex Trackman , Under Deputy Chief Engineer(Con), East Central Railway, Rajgir, Nalanda, Bihar- 822124.
20. Ram Rekha Yadav, Son of late Nepal Yadav, Resident of Village- Rohan Bigha, District- Palamu, Ex Trackman, Under Deputy Chief Engineer(Con), East Central Railway, Rajgir, Nalanda, Bihar-822124.
21. Moti Chand Prasad, Son of late B.D. Shaw, Resident of Village/Post- Meral, District- Garhwa, Ex Mate, Under Deputy Chief Engineer(Con)II, Eastern Railway, Howrah, 822124.



22. Bhola Nath Vishwakarma, Son of late B. Vishwakarma, Resident of Village/Post- Singsigi, District- Palamu, Ex- Carpenter, Chief Administrative Officer (Con), Eastern Raiwal, Howrah, 822124.
23. Ram Chandra Son of late Kewal, Resident of Village/Post- Meral, District- Garhwa, Ex H/Man, Under Section Engineer (P.Way), East Central Railway, Patratu, 822124.
24. Ramdeo, Son of late Tulsi, Resident of Village/Post- Meral, District- Garhwa,, Ex Trackman , Under Deputy Chief Engineer(Con), Dehri-On-Sone, District- Rohtas(Bihar), 232101.
25. Ranjendra Prasad, Son of Balkeshri Ram, Ex Chowkidar, Under Dy. Chief Engineer(Con), EC Railway, Mugalsarai, 822114.
26. Arun Ram, Son of late Hari Charan Ram, Ex Trackman, Under SSE(Con), E.C. Railway, Danapur, District- Patna, 801503.
27. Md. Kayum, Son of late Mohamddin, Ex Trackman, Under SSE (Con), E.C. Railway, Danapur, District- Patna, Bihar, 801503.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satyeshwar Prasad

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. 317 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. 16 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. 317 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(3) 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(3) 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”(A/1 series to the supplementary petition of the paper book) 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)

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

