

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13147 of 2017**

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1. The Union Of India and Ors
2. The Genetral Manager Personnel, East Central Railway, Hajipur, District- Vaishali Bihar.
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna Bihar
4. The Senior Divisional Engineer Co-ordination, East Central Railway, Danapur, P.O.- Khagaul, Distri
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District -
6. The Senior Financial Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. Shyam Narayan and Anr Son of Late Garaj, Ex. Trackman, under Senior Section Engineer P.Way, East Central Railway, Buxar, Resident of Village- Sangrampur, Post- Pashara, District- Buxar Bihar.
2. Hari, Son of Late Ram Karan, Ex. Trackman, under Senior Section Engineer (P.Way), East Central Railway, Bu Resident of Village- Gurudas Mathiya, Post- Sodhila, District- Buxar Bihar.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bijoy Kumar Sinha, Advocate  
For UOI : Mr. Kanak Verma, CGC

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE RAJIV ROY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 11-07-2022**

Matter called twice, no one appears for the respondents.

2. The petitioners – railway feeling aggrieved by the order dated 10.01.2017 passed in OA/913 of 2015 by the Central



Administrative Tribunal, Patna Bench, Patna (for short “Tribunal”) presented this petition.

3. The respondents *Shyam Narayan* and another were stated to have been denied pensionary benefits on account of their retirement from service. The Tribunal allowed their application while directing the petitioners - railway to recalculate and refix the pension that they are entitled to 100 % service rendered as temporary status. Such order has been passed while stating that Hon’ble High Court and Apex Court have held that such of those casual labourers/temporary status employees are entitled to 50 % and 100 % service rendered and such service shall be counted for pensionable service. Identical issue was subject matter before the Apex Court in the case of *Union of India and Ors. vs. Rakesh Kumar and Ors.* reported in **2017 (3) PLJR (SC) 83** wherein the Apex Court elaborately considered and proceeded to held that 50 % of the service rendered against the casual labourers/temporary status is required to be computed for the purpose of pension. In fact Rule 20 of the Railway Service (Pension) Rules 1993 reads as under:

“20. Commencement of qualifying service – Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:



Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:

Provided further that -

(a) in the case of a railway servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a railway servant not covered by clause (a), service rendered before attaining the age of eighteen sixteen years shall not count, except for compensation gratuity.”

4. In the light of the aforesaid provision, the order of the Tribunal dated 10.01.2017 is incorrect in ordering 100 % service rendered as a temporary status is required to be counted for the purpose of extending pension to the contesting respondents. Accordingly petitioners – railway have made out a *prima facie* case so as to interfere with the order dated 10.01.2017 passed in O.A. No. 913 of 2015 by the Tribunal.

5. In the light of the Apex Court decision in the case of ***Union of India and Ors. vs. Rakesh Kumar and Ors.*** reported in **2017 (3) PLJR (SC) 83** read with Railway Service (Pension) Rules 1993, the respondents are entitled to count only 50 % of service rendered as a temporary status for fixation of pension. If the petitioners – railway have not extended 50 % of service with



reference to temporary status towards calculation of pension to the respondents, in that event, the same shall be calculated in terms of Rule 20 read with Apex Court decision in the case of Union of India and others. vs. Rakesh Kumar and proceed to refix the pension of the respondents and disburse the dues of pension amount along with interest @ 8 % *per annum*.

6. The above exercise shall be completed within a period of three months from the date of receipt of this order if the contesting respondents have not been paid pension while counting 50 % of service of the temporary status with.

7. With the above observation, writ petition stands disposed off.

**(P. B. Bajanthri, J)**

**( Rajiv Roy, J)**

GAURAV S./-

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