

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17922 of 2017

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1. The Union Of India through the General Manager, East Central Railway, Hajipur, District-Vaishali
 2. The General Manager Personnel, East Central Railway, Hajipur, District-Vaishali.
 3. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur, District- Vaishali
 4. The Divisional Railway Manager, East Central Railway, Danapur.
 5. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
 6. The Senior Divisional Engineer Co-ordination, East Central Railway, Danapur.
 7. The Senior Divisional Financial Manager, East Central Railway, Danapur, District- Patna.

... .. Petitioner/s

Versus

1. Nawalak, son of Late Hemraj, Ex- Trackman under Senior Section Engineer P. Way, East Central Railway, Lakhisarai, District- Patna Bihar.
2. Lallo, son of Late Ramjee, Ex- Trackman under Senior Section Engineer P. Way, East Central Railway, Lakhisarai, District- Patna Bihar.
3. Jamun, son of Late Ram Charan, Ex- Trackman under Senior Section Engineer P. Way, East Central Railway, Kiul Bihar.
4. Sri Kant, son of Late Tulsi, Ex- Trackman under Senior Section Engineer P. Way, East Central Railway, Mokama, Patna Bihar.
5. Ramuchit, son of Late Lakhan, Ex- Keyman, under Senior Section Engineer P. Way, East Central Railway, Mokama, District- Patna, Bihar.
6. Smt, Pavitri Devi, wife of Late Bishun Deo, Ex- Trackman under Senior Section Engineer P. Way, East Central Railway, Jhajha, Resident of Village/ Post- Kanhaipur, District- Patna Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s-UOI :	Mr. Pradeep Kumar, Advocate (Sr. Panel Counsel) Mr. T.N. Thakur, Advocate (C.G.C.)
For the Respondent/s :	Mr. Sunil Kumar, Advocate Mr. Anurag Kumar, Advocate Mr. Abhay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)



Date : 30-01-2023

The petitioner-Union of India presented this petition, questioning the validity of the order of the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') dated 07.09.2016 passed in O.A./050/00649/16. Respondents were initially appointed on *Ad-hoc* basis and thereafter they were brought on temporary status and further their services were regularized. In this backdrop, question for consideration is whether they are entitled for consideration of entire temporary status service towards grant of retiral benefits or not? In this regard, respondents filed O.A. No. 649 of 2016 before the CAT. The CAT passed the following orders, Para-8 of which reads as under:-

8. Accordingly, this OA is disposed of at the admission stage itself with a direction to the respondents 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 casual 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.

2. Feeling aggrieved and dis-satisfied with the order of the CAT, Union of India-Petitioner preferred this petition.



3. Heard the learned counsel for the respective parties.

4. Learned counsel for the petitioner submitted that decision of the CAT passed in O.A No. 649 of 2016 is contrary to decision passed by a Division Bench of this Court in ***CWJC No. 16637 of 2019 (The Union of India and Ors Vs. Brahmdeo Mistry and Ors.)*** read with the Apex Court's decision in the case of ***Union of India and Ors vs. Rakesh Kumar*** reported in ***2017 (3) PLJR SC 83***, to the extent that only 50% of the casual labour/temporary status could be counted for the purpose of granting pension.

5. On the other hand, learned counsel for the respondents could not counter the aforesaid contentions.

6. Therefore, the petitioner has made out a *prima facie* case, so as to interfere with the order of the CAT dated 07.09.2016 passed in O.A No. 649 of 2016. Accordingly, order of the CAT is modified to the extent that respondents are held entitled to count to the extent of 50% of the temporary status service towards grant of pension only in the light of the Apex Court's decision in the case of ***Union of India and Ors vs. Rakesh Kumar (supra)*** and this Court's decision in ***CWJC. No. 16637 of 2019 (supra)***. Accordingly, petitioner-Union of India is hereby directed to calculate the service and fix the pension of



the respondents and calculate and release the amount within a period of three months from the date of receipt of this order, failing which, they are entitled to interest on belated settlement of retiral benefits like pension etc.

7. Learned counsel for the respondents at this juncture submitted that for the purpose of extending gratuity amount the entire service is required to be counted for the purpose of calculating gratuity amount in the light of the Apex Court's decision in the case of *Netram Sahu vs. State of Chattisgarh and Anr.*, reported in, (2018) 5 SCC 430. In this regard, the concerned petitioner is hereby directed to take note of service particulars of the respondents read with the aforementioned decision namely *Netram Sahu vs. State of Chattisgarh and Anr. (supra)* and proceed to pass speaking order, if the respondents are not entitled to count 100% casual/temporary status service for the purpose of gratuity, if they are otherwise eligible in terms of the decision in the case of *Netram Sahu vs. State of Chattisgarh and Anr. (supra)*, in that event, necessary calculation shall be made to the extent that they are entitled to count 100% service towards grant of gratuity. Irrespective of entitlement of 100% or 50% for the time being, the concerned petitioner is hereby directed to extend 50% of service as a



casual or temporary status for the purpose of gratuity, thereafter re-determine as to whether 100% service as a casual/temporary status could be counted for the purpose of granting gratuity or not? In this regard, necessary decision shall be taken within a period of three months from the date of receipt of this order and communicate the decision to the respective respondent at the earliest.

8. The writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	03.02.2023
Transmission Date	

