

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA No. 050/000593 of 2018**

Date of order 17.07.2018

**CORAM**  
**HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**  
**HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)**

Yashoda Devi Wife of Late Makeshwar, Resident of Village-Kadipur, P.O.-Belhari, District- Gaya (Bihar).

..... Applicant.

**By advocate: Sri M.P. Dixit.**

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Digghi Kala, P.S.-Hajipur (Town), district- Vaishali at Hajipur, PIN code- 841001 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-Digghi Kala, P.S.-Hajipur (Town), district- Vaishali at Hajipur, PIN code- 841001 (Bihar).
3. The Divisional Railway Manager, East Central Railway, Mugalsarai District- Chandauli (U.P.). 232101.
4. The Senior Divisional Personnel Officer, East Central Railway, Mugalsarai District-Chandauli-(U.P.)-232101.
5. The Senior Divisional Engineer (Co-Ordination), East Central Railway, Mugalsarai District-Chandauli-(U.P.)-232101.
6. The Senior Divisional Financial Manager, East Central Railway, Mugalsarai District-Chandauli-(U.P.) 232101.
7. The Assistant Divisional Engineer, East Central Railway, Gaya-(Bihar) 823001.
8. The Section Engineer (P.Way), East Central Railway, Gaya-(Bihar).823001.

..... Respondents.

**By advocate: Sri S.K. Ravi, Ld. Standing Counsel for the Railways.**

**ORDER (ORAL)**

**Per Mr. K.N. Shrivastava /M (A):-** The applicant's husband late Shri Makeshwar was joined the respondent's Railway department on 01.12.1972 as a Casual Labour. He was granted Temporary Status on 25.01.86 and was regularised in service on 14.02.1992. He retired from service on 31.01.1995 after attaining the age of superannuation.

He died on 02.10.2000. At that point of time, the services rendered as a casual labour was not being counted for determining qualifying service for pension. However, after subsequent judicial pronouncements, 50% of the period of service rendered as casual labour is to be counted for calculation of the qualifying service for the purpose of pensionary benefits.

2. The applicant, after the death of her husband, approached this Tribunal in OA 266 of 2013 seeking grant of family pension to her. The said OA was allowed by the Tribunal vide order dated 19.10.2016. The operative part of the Tribunal's order reads as under:-

*“8. Accordingly, the OA is allowed. The respondents are directed to count 100% period rendered under Temporary Status from 01.01.1981 and 50% service rendered as casual labourer from 01.12.1972 along with the 100% period after regularization till the date of superannuation and thereafter to revise the entire pensionary benefits and make payment of arrears thereof with interest @ 8% p.a. with all consequential benefits within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.”*

3. As there was some error in the order in regard to the date of grant of Temporary Status, the respondents Railway Department filed a review application before the Tribunal. It was stated that late Shri Makeshwar was granted Temporary Status on 25.01.1986 whereas inadvertently the date of grant of Temporary Status was mentioned as 01.01.1981 in the order dated 19.10.2016 of the Tribunal. The Tribunal, after perusal of records vide its order dated

29.03.2017 in the ibid of RA directed, for correction of the date as prayed for by the review applicant (Railway Department).

4. The respondent Railway Department challenged the order of the Tribunal dated 19.10.2016 passed in OA 266/2013 before the Hon'ble Patna High Court in CWJC No. 11433/2017. It was disposed of by the Hon'ble Patna High Court vide judgment dated 21.12.2017 slightly modifying the Tribunal's order in regard to counting of the temporary service period for the purpose of pensionary benefits relying on the judgment of the Hon'ble Apex Court in the case of Union of India Vs. Rakesh Kumar, reported in 2017 (3) PLJR SC 83. The Hon'ble High Court directed that only 50% of the service rendered in Temporary Status is to be counted towards qualifying service for pensionary benefits.

5. The applicant is aggrieved of Annexure-A/5 order dated 21.05.2018 of the Railway department whereby she has been denied her claim for family pension despite the Tribunal's order dated 09.10.2016 in OA 266/2013 and order of Hon'ble Patna High Court dated 21.12.2017 passed in CWJC No. 11433 of 2017.

6. Sri M.P. Dixit, l/c for the applicant drew our attention to the very first para of the impugned order which reads as under:-

*“ As per your petition you have mentioned that Late Makeshar Ex-Trackman was appointed as casual labour much before the dated 25.01.1986 of Granted Temporary Status, but on going through the available office records the date of casual labour not verified.”*

7. Shri Dixit submitted that the period of service rendered by the husband of the applicant has already been taken judicial note by the Tribunal while adjudicating OA 266/2013.

8. We have perused the records. We find that the respondents are legally obliged to implement the order dated 19.10.2016 passed in OA 266/2013 as modified by the Hon'ble Patna High Court vide order dated 21.12.2017 passed in CWJC No. 11433/2017.

9. Hence, filing of this fresh OA and seeking the relief which has already been granted, would not be in order. When it was pointed out to Mr. Dixit, he sought leave of the Tribunal to withdraw the OA with a liberty to file a contempt petition vis-a-vis order dated 19.10.2016 passed in OA 266/2013.

10. Prayer is allowed. The OA is dismissed as withdrawn with a liberty as prayed for.

[ Jayesh V. Bhairavia ]M(J)

[ K.N. Shrivastava]/M(A)

BP/