

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A./O50/00378/2017

Order reserved on 29.08.2018

Date of orders : 25.09.2018

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]

Smt. Ampi Devi @ Anpi Devi, W/o Late Bateshwar, retired as
Malisew, Mechanical Eastern Railway, Jamalpur, Munger.

.....applicant

By Advocate : Mr. Ashok Kumar

Versus

1. The Union of India through the Chief Works Manager, Eastern Railway, Jamalpur, Munger, PIN Code : 811214.
2. Divisional Town Engineer, Eastern Railway, Jamalpur, Munger, PIN Code 811214.
3. Assistant Town Engineer, Eastern Railway, Jamalpur, Munger, PIN Code 811214.
4. Assistant Personnel Officer, Eastern Railway, Jamalpur, Munger, PIN Code 811214.
5. The Inspector of Works [Workshop], Eastern Railway, Jamalpur, Munger, PIN Code 811214.

..... Respondents.

By Advocates: Mr. S.K.Ravi

ORDER

Per Jayesh V. Bhairavia, Member [J]:- The applicant has filed this

OA for the following reliefs:

- “8. Under the aforesaid circumstances it is therefore, prayed that
your honour be pleased to re-fix the pension of husband of the

applicant and also family pension, and pay arrear salary on the pension and all pensionary benefits after considering the previous work period from 15.07.1967 to 15.05.1978 as casual labour and from 16.09.1978 to 28.06.1991 as half service as being qualifying service for the purpose of fixation of pension.”

2. The brief facts of the applicant's case is that her husband late Bateshwar was initially appointed as casual labour on 15.07.1967 in the Eastern Railway, Jamalpur, Munger under Inspector of Works [Workshop] and worked as such till 15.05.1978. Thereafter, he was appointed as Temporary Valve-man for a period of one year on probation in the pay scale of Rs. 196-232 [RC] plus usual allowances as per Rules, vide Annexure-A/4 dated 14.09.1978, and posted at Jamalpur under Assistant Town Engineer, Eastern Railway, Jamalpur.

The husband of the applicant joined as Valveman on 16.09.1978 and continued as such till his voluntary retirement, i.e. 31.01.2008 in the pay scale of Rs. 2650-4000 at the basic pay of Rs. 3706/-.

The learned counsel for the applicant submitted that the Workshop Accounts Officer, Eastern Railway, Jamalpur issued pension payment order in favour of the applicant on 18.02.2008 to Manager, State Bank of India, Main Branch Chowk, Munger stating pension should be commenced from 01.02.2008.

The learned counsel further pleaded that the service rendered by

the husband of the applicant from 29.09.1991 to 31.01.2008 has been considered for fixation of pension and his service rendered in the Department for 6 years, 4 months 22 days has not been treated as qualifying service, which is illegal and arbitrary, hence this OA should be allowed.

3. The learned counsel for the applicant relied upon a decision rendered by CAT, Patna Bench in OA No.348 of 2009, Krishna Nand Mandal vs. UOI, decided on 29.04.2010, in which it has been held that entire period of temporary status from 20.02.1979 to 15.06.1986 as Casual Labour and half service from 17.08.1971 to 19.02.1979 would be counted as qualifying service for the purpose of pensionary benefits. The applicant further submitted that the aforesaid order of the Tribunal has been upheld by the Hon'ble High Court of Patna in CWJC No.6228 of 2011, vide order dated 06.09.2011. The Union of India thereafter, moved before the Hon'ble Supreme Court in SLP [Civil] CC 6454 of 2012 challenging the said order dated 06.09.2011, which was also dismissed by order dated 16.11.2012.

4. The respondents contested the case by filing a written statement. The respondents pleaded that recently the Hon'ble Patna High Court in CWJC No.4612 of 2017 [Union of India through GM, E.C. Railway, Hajipur & Ors vs. Md. Karar Hussain] has allowed the writ petition with partial modification to the order dated 02.09.2016 passed in OA

No.234 of 2016 after considering the ratio laid down by the Hon'ble Apex Court in the case of Union of India vs. Rakesh Kumar under which Hon'ble Patna High Court has been directed that the period of work both as Casual or Temporary has to be treated 50/50 for the purpose of qualifying service of pension vide its order dated 24.08.2017. The respondents further pleaded that the Hon'ble Apex Court in the case of UOI vs. Rakesh Kumar crystallized the issue with regard to treating 100% service in temporary status and 50% of service as Casual in the following manner as observed in para 55, which is reproduced below :

“55. In view of foregoing discussions we held :-

- [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 purpose of calculation of pension.*
- [ii] The casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purpose of pension.*
- [iii] Those casual worker 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.”

7. The respondents further pleaded that Rule 107 of Railway Services [Pension] Rules, 1993 empowers to relax the Pension Sanctioning Authority of the Ministry of Railways [Railway Board] to examine each such case and arrange to communicate the sanctioned of the President to the proposed dispensation or relaxation as it may consider necessary keeping in view the merit of each case provided that no such order shall be made without concurrence of the Department of Pension and Pensioners Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Govt. of India and by virtue of the said proviso, Department of Pension and Pensioners Welfare, in the Ministry of Personnel, Public Grievances and Pension, Govt. of India shall be necessary party in the instant case, but since the applicant has not impleaded the necessary party, as such this OA deserves to be dismissed on this ground alone.

8. The respondents have further pleaded that the husband of the applicant, late Bateshwar was worked as Casual Labour from

15.07.1967 o 15.05.1978 on daily rated bases and thereafter, he was appointed as Valve-man on 16.09.1978 on pay of Rs. 196/- in the pay scale of Rs. 196-232/-. He was promoted as permanent Chwkidar in the scale of Rs. 750-940 w.e.f. 29.06.1991. The respondents have also pleaded that in terms of CPO/ER/KKK's Sl. No.193/80 as de-casual Valve-man his services rendered in the Department has already been reckoned as half of the service as qualifying for pensionary benefits, vide Annexure-R/2.

9. 4. Heard the parties and perused the records and considered their submissions.

5. In the present case, it is not in dispute that the applicant was initially engaged as daily rated casual labour for the period 15.07.1967 to 15.05.1978. Thereafter, he was appointed as de-casual Valve Man on 16/17.09.1978 on pay of Rs. 196/- in the scale of Rs. 196-232/- per month on temporary basis. subsequently, he was promoted as permanent Chowkidar in scale of Rs. 750-940/- w.e.f. 29.06.1991. He was allowed to retire voluntarily on 31.01.2008. It is noticed that on retirement on voluntary basis the respondents had considered service period of his actual appointment in the respondents Department, i.e. 17.09.1978 as de-casual Valve Man and continued till 26.06.1991. The respondents had considered 50% of the said temporary service period as qualifying service for the purpose of

pension and 100 % qualifying service for the period from 29.06.1991 to 31.01.2008 for his regular service. Accordingly, total 22 years of qualifying service has been counted by the respondents for the purpose of calculation of pension and other retiral dues (Annexure A/3 series refer). The respondents had issued PPO on 18.02.2008 and the pension of Late Bateshwar from 01.02.2008.

6. In the present case, the learned counsel mainly submitted that Late Bateshwar had worked as casual labour for the period 15.07.1967 to 30.06.1977 and 01.07.1977 to 15.05.1978 (total working days upto 15.05.1978 is 460 and half days) as per record of service as per Annexure A/2. Therefore, the said Ex-employee claims 50% of such period as qualifying service for pension. However, the same was not considered by the respondents. It is noticed that notice dated 15.12.2014 was issued on behalf of Late Bateshwar through his lawyer followed by another notice dated 27.04.2016 to the respondents (Annexure A/6 series). The learned counsel for the applicant vehemently submitted that as per the law laid down by Hon'ble Apex Court in the case of Union of India Vs. Rakesh Kumar reported in 2018(1) SCC (L&S) 51 as also order passed by this Tribunal in OA No. 348/2009 upheld by Hon'ble High Court and Hon'ble Apex Court and submitted that the applicant's case is required to be re-considered by the respondents for grant of

arrears of pension. It is also submitted by the applicants that identically situated railway employees had filed OA 348/2009 before this Tribunal and said OA was decided in the month of April, 2010 and subsequently the said order was confirmed by Hon'ble High Court as well as Hon'ble Apex Court vide order dated 16.04.2012 and thereafter the Late Bateshwar was advised to claim his right. Accordingly notices were issued on his behalf to the respondents in the year 2014 but remained without any response. Therefore, claim of arrears of pension falls under the continuous cause of action and the case of the applicants is required to be re-considered by the respondents.

7. In contra, the learned counsel for the respondents submitted that as such the applicant was not on pay roll as casual labour for the period 15.07.1967 to 15.05.1978. He was engaged only as daily rated mazdoor and as such there is no record available from which it can be verified whether the said Late Bateshwar had continuously worked as casual labour during such period, in absence of it, the said service period cannot be counted for the purpose of pension. It is the further contention of the respondents that in fact the Late Bateshwar was appointed as casual labour only on 16/17.09.1978. It is further submitted that after voluntary retirement in the year 2008 till he expired on 31.07.2014 the said Late Bateshwar was receiving his pension.

However, this belated claim of the applicants cannot be entertained.

8. It is noticed that the dependent of said Late Bateshwar, i.e. applicant herein was provided information under the provision of RTI vide letter dated 11.06.2016 by the office of Eastern Railway, Jamalpur that no service records regarding the service period of 1967 to 1978 of the Late Bateshwar as casual labour is available in the office. It is further informed that it might be due to the fact the periods mentioned are more than 25 years old (Annexure A/8 series refers). In this regard, the learned counsel for the applicant submitted that on one hand the respondents have filed their detailed reply and denied the claim of applicants by relying upon the service record of Late deceased railway employee and on the other hand the applicant's were informed under the provisions of RTI that service records are not available due to lapse of 25 years. Such submissions of the respondents are contradictory.

9. On examination of the materials on record and submissions, I am of the considered opinion that since it is not in dispute that the applicant was engaged as casual labour from 15.07.1967 to 15.05.1978, as admitted by the respondents in para 9 of their written statement and also corroborated from the service book (Annexure A/2 refers), 50 % of such service period

ought to have been considered as qualifying service for the purpose of pension of casual labour by the respondents as also the same is required to be considered in the light of the law laid down by the Apex Court as referred hereinabove.

10. In view of above discussion, the respondents are accordingly directed to place the case of the applicant before the Pension Sanctioning Authority for considering the claim of the applicants for modification/rectification of pension and arrears thereon within a period of three months from the date of receipt of this order. Accordingly, the OA is partly allowed. No order as to costs.

[Jayesh V. Bhairavia]
Member [Judicial]

mps/-