

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**

**O.A. No.050/00377/2017**

Reserved on: 29.08.2018  
Date of Order: 25.09.2018

**C O R A M**  
**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

1. Smt.Putul Devi W/o late Mahadeo Prasad, S/o late Sonapath, Retired Khalasi.
2. Sri Manjit Kumar Pal @ Manoj Kumar S/o Late Mahadeo Prasad.S/o Late Mahadeo Prasad.

Both are resident of Village/Mohalla-Piparpanti Ticker/PO-Math Nagar, P.S.-NathNagar, Jhonti Sah lane/ Dist- Bhagalpur.

..... Applicants.

By Advocate : Shri Ashok Kumar

-Versus-

1. Union of India through the Chief Work Manager, Eastern Railway, Jamaapur, Munger, Pin Code No.-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.

..... Respondents.

By Advocate(s) :- Shri S.K. Ravi

**O R D E R**

**Per Mr. Jayesh V. Bhairavia, M (J)** :- This is a joint petition of applicant no.1 & 2, namely, Smt. Putul Devi W/o late Mahadeo Prasad and Sri Manjit Kumar Pal @ Manoj Kumar S/o Late Mahadeo Prasad respectively seeking relief for re-fixation of pension of Late Mahadeo Prasad and to pay the arrears of pension

and all pensionary benefits after considering the previous working period from 26.12.1970 to 15.05.1978 as Casual Labour and from 17.09.1978 to 25.04.1991 as half service as being qualifying service for the purposes of fixing of pension.

2. The brief facts of the case as submitted by the applicant is as below:-

2.1 The husband of applicant no. 1/father of the applicant no.2 i.e late Mahadeo Prasad was an employee of Railway who died on 22 August 2016 leaving behind his wife namely Putul Devi and a son namely Sri Manjit Kumar Pal @ Manoj Kumar.

2.2 The deceased employee late Mahadeo Prasad was initially appointed as Casual Labour on 26.12.1970 in the Eastern Railway, Jamalpur as Inspector of Works (workshop). He worked on the said post upto 30.06.1970 and thereafter again worked upto 15.05.1978. Thereafter the deceased was appointed as Khalasi for a period of three months in the pay of Rs.196/- (in Pay Scale Rs.196-232/-) w.e.f. 16.09.1978 vide order of Assistant Town Engineer, Eastern Railway, Jamalpur dated 14.09.1978. At the time of his retirement he was working as a helper khalasi with Inspector of Works (workshop) Eastern Railway, Jamalpur.

2.3 The deceased employee retired voluntarily on 31.12.2003 and the Dy. Chief Accounts Officer (W), E. Railway, Jamalur issued Pension Payment Order (PPO) to applicant no.1 on 10.01.2004 to State Bank of India, Main Branch, Chowk Munger stating pension should commence from 01.01.2004. The service of the husband of applicant was considered as full service from 17.09.1978 to 25.04.1991 and from 26.04.1991 to 31.12.2003 as half period has been considered for qualifying service for the purpose of pension. Accordingly, the total qualifying service period of deceased employee has been considered for pension as 18 years, 11 months and 24 days and about 6 years 03 months 19 days has been treated as non-qualifying service for the purpose of pension.

2.4 The applicant relied upon the judgement/order dated 29.04.2010 passed by this Tribunal in OA 348/2009 which was upheld upto the Hon'ble Supreme Court of India in SLP (Civil) CC 6454 of 2012. Therefore the applicant has prayed for the relief as stated in Para 8 of this O.A.

3. The respondents in their written statement denied the contention of the applicant in his O.A and further submitted that :-

3.1 Late Mahadeo Prasad was initially engaged as a Casual Labour (daily rated) from 26.12.1970 to 15.07.1978. Thereafter, he was appointed as de-casual Khalasi on 16/17.09.1978 on pay of Rs. 196/- in the scale of Rs. 196-232/- per month. Thereafter, he was promoted as permanent Khalasi in scale of Rs. 750-940/- w.e.f. 26.04.1991 and subsequently the applicant was allowed to retire voluntarily on 31.12.2003. on . Considering the said service record of the applicant the respondents had counted the said service period in terms of order No. CPO/ER KKK's SL. NO. 193/80 dated 28.07.1981 (Annexure R/3 refers). Accordingly, 50% of the service period from 16.09.1978 to 26.04.1991 for which the applicant was appointed as de-casual Khalasi has already been counted as qualifying service for pensionary benefits.

3.2 The I/c for respondents further submitted that recently after considering the ratio laid down by the Hon'ble Apex Court in the case of Union of India Vs Rakesh Kumar, the Hon'ble Patna High Court in CWJC No. 4612/2017 (Union of India through GM, E.C. Railway, Hajipur & Ors Vs Md. Karar Hussain) by which the Hon'ble Patna High Court vide its order dated 24.08.2017 has allowed the said writ petition with partial

modification to the order dated 02.09.2016 passed in OA 234/2016 and directed that the period of work both as casual or temporary has to be treated as 50% for the purpose of calculating the qualifying service of pension.

3.3 It is further submitted that in the case of Union of India Vs Rakesh Kumar, the Hon'ble Apex Court held as under :-

- "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."*

3.4 It has further been submitted that Rule 107 of Railway Services (Pension) Rule, 1993 Constance power to relax to the Pension Sanctioning Authority of the Ministry of Railway (Railway Board) shall examine each such case

and arrange to communicate the sanctioned of the President to the purposed 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 Pension, Govt. of India. Therefore, he submitted that Govt. of India should be necessary party in the instant O.A. It is further submitted that in fact the respondents have correctly calculated the qualifying service of the applicant for the purpose of grant of pension. Therefore, the applicant is not entitled the relief as sought in this OA.

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 on 26.12.1970 till 15.07.1978. Thereafter, he was appointed as de-casual Khalasi 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 Khalasi in scale of Rs. 750-940/- w.e.f. 26.04.1991. He was allowed to retire voluntarily on 31.12.2003. 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 labour (Khalasi) and continued till 25.04.1991. 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 26.04.1991 to 31.12.2003 for his regular service. Accordingly, total 19 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 10.01.2004 and the pension of Late Mahadeo Prasad was commenced from 01.01.2004.

6. In the present case, the learned counsel mainly submitted that Late Mahadeo Prasad had worked as casual labour for the period 1970 to 1978. Therefore, 50% of such period is required to be considered 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 Mahadeo Prasad through his lawyer followed by another notice dated 27.04.2016 to the respondents (Annexure A/8 and A/9). To substantiate this submission the learned counsel for the applicants has placed reliance on the record of service as casual labour (Annexure A/1). 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 (Annexure A/5 to A/7 refers) 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 (Annexure A/7 refers) and thereafter the Late Mahadeo Prasad 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 26.12.1970 to 15.07.1978. 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 Mahadeo Prasad 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 Mahadeo Prasad was appointed as casual labour only on 16/17.09.1978. It is further submitted that after voluntary retirement in the year 2003 till he expired on 22.08.2016 the said Late



Mahadeo Prasad was receiving his pension. However, this belated claim of the applicants cannot be entertained.

8. It is noticed that the applicant no. 1 and 2, i.e. the dependents of said Late Mahadeo Prasad were 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 1970 to 1978 of the Late Mahadeo Prasad 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/10 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 26.12.1970 to 15.07.1978, as admitted by the respondents in para 7 of their written statement and also corroborated from the service book (Annexure A/1 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 ( J )

mks/srk