

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD**

Allahabad, this the **4th** day of **April**, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member-J

Original Application No.330/324/2019

1. Narendra Dev aged about 59 years, son of Dulichand R/o Gram Khanpur, Post Bandi District Mathura.
2. Ramzani S/o Shazad Khan R/o Zajo Railway Station, Behind Cabin-B Saryan Zajo, Agra.
3. Anil James S/o Henrey Mikel R/o Behind Saint Judges, High School, Sri Saiyed Nagar, Prem Nagar, Nagra District Jhansi.

..... **Applicants.**

By Advocate : Shri S.M. Ali

V E R S U S

1. Union of India through General Manager, Head Quarter, North Central Railway, Allahabad.
2. General Manager Head Quarter, North Central Railway, Allahabad.
3. Deputy Chief Material Manager, Central Railway, Jhansi.
4. The Chairman, Ministry of Railway, Railway Board Rail Bhawan, New Delhi.

..... **Respondents**

By Advocate : Shri Shesh Mani Mishra

O R D E R

The applicants have filed this OA for following reliefs :

"(i) To issue order or direction for reckon 50% of casual service period and temporary service period as qualifying service on absorption is regular appointment for purpose of subscription of G.P.F. and Old pensionary benefits in the light of circular of Railway Board and judgment dated 24.03.2017, and to enter the correct initially date of appointment with past service in the service book of the applicants along with all consequential benefits.

- (ii) ***To consider and decide the pending representation of the applicants in the light of Apex Court judgment and railway board orders, for which time bound direction are praying.***
- (iii) ***To issue award cost and compensation of applicants."***

2. This OA No.324 of 2019 has been filed by three applicants for which a MA No.330/759/2019 under Rule 4(5) of CAT (Procedure) Rules, 1987 has also been filed. It appears that all the applicants have common interest and question of law and facts are common, therefore, MA No.330/759/2019 is allowed. All the applicants are permitted to pursue their case jointly. .

3. The contents of Original Application shows that Narendra Dev, applicant No.1, was appointed as Casual Labour on 01.04.1985 as per provision of Indian Railway Establishment Manual. He was allegedly granted temporary status on 07.03.1989 and worked up to 29.05.1990 under the Dy. C.M.M. (Store) Jhansi. He is said to have been regularized in service on 08.08.2006.

4. The applicant No.2, Ramzani, was appointed as Casual Labour on 01.04.1986. As per the content of Original Application he said to have been granted temporary status on 07.03.1989 and worked up to 22.07.1991 under the Dy. C.M.M. (Store) Jhansi. He is said to have been regularized in service on 24.03.2006.

5. The applicant No.3, Anil James, was appointed as Casual Labour on 26.06.1985. Counsel for the applicant submits that he was granted temporary status on 07.03.1989 and worked up to 27.07.1989 under by the Dy. C.M.M. (Store) Jhansi. He is said to have been regularized in service on 29.10.2014.

6. Learned counsel for the applicants has submitted that applicants were also granted passes, 2 set of P.T.O. in year and leave etc. under the rules of I.R.E.M. The contention is that the Railway department has wrongly entered the first date of appointment as date of regularization instead of actual date of appointment in the service records of the applicants. Therefore, the applicants are facing various losses in the service benefits and the respondents have also deducting National Pension Scheme (in short N.P.S.) from the salary of the applicants, despite that, all the applicants were appointed prior to new pension scheme effective from 01.01.2004. Therefore, they are entitled for old pension under guidelines of Railway Board and in view of Hon'ble Apex Court judgment dated 24.03.2017.

7. The submission of the applicants' counsel is that various Benches of this Tribunal as well as Hon'ble Apex Court have directed for counting of 50% casual service period and 100% temporary period to regularization in the qualifying service of the employees for the purpose of old pensionary benefits. Learned counsel for the applicants have drawn the attention of this Tribunal towards the judgment dated 23.08.2018 passed in **OA No.399 of 2016 – Mata Prasad Vs. Union of**

India & ors. Wherein following directions were issued to the respondents :

"6. Counsel for both the parties have now conceded that dispute has move already been decided by the Hon'ble Apex Court in Civil Appeal No. 3938 of 2017 arising out of SLP (C) No. 23723 of 2015 Union of India & Ors. Vs. Rakesh Kumar & Ors. wherein following conclusions have been delineated in Para No. 55:-

"55. In view of foregoing discussion, we hold :-

(i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised 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 fulfil 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. In view of the aforesaid both the counsels have agreed that now this OA can be finally disposed off in terms of decision of Hon'ble Apex Court. It is seen that the claim of inclusion of 100% period for calculation of pensionary benefit of temporary status is not sustainable as Apex Court has held that the casual worker after obtaining the temporary is entitled to reckon 50% of his services till he regularized on regular/temporary post for the purposes of calculation of pension. Similarly the casual worker before obtaining the temporary status is also entitled to reckon the 50% for the casual services for the purpose of pension.

8. Accordingly, the OA is finally disposed off. The respondents are directed to take appropriate steps within a period of four months, in terms of aforesaid Judgment of Hon'ble Apex Court, from the date of receipt of a certified copy of this order. No costs."

8. It is pertinent to point out that judgment of this Tribunal is based on the direction issued by Hon'ble Apex Court in Civil Appeal No.3938 of 2017 arising out of **SLP (C) No.23723 of 2015 Union of India & Ors. Vs. Rakesh Kumar & Ors.**

9. Subsequently, Railway Board has also issued a circular letter No.E(NG)II/2017/ECR/CL/4, dated 27.04.2017 on this issue which is available on record as Annexure-A-6. The contents of this circular are reproduced as below :

"Subject : Counting of the period of service of Open Line Casual Labour and Project Casual Labour after their attainment of Temporary Status as qualifying service for pensionary benefits on absorption in regular employment on Railways.

No.E(NG)II/2017/ECR/CL/4,dated 7.04.2017

The issue of Counting of the period of service of Open Line Casual Labour and Project Casual Labour after their attainment of Temporary Status as qualifying service for pensionary benefits on absorption in regular employment on Railways have been under consideration of Board for quite some time owing to spate of litigations in various courts.

The matter has comprehensively been deliberated by the Board and accordingly, instructions contained in Board's letter No.E(NG)II/78/CL/12 dated 14.10.1980 and E(NG)II/85/CL/6 dated 28.11.1986 (Bahri's RBO 91/1986,p.394 are re-iterated. Further, all such cases pending in various courts on the issue may also be contested in light of Hon'ble Supreme Court judgment dated 24.3.2017 in Civil Appeal No. 3938 of 2017 arising out of SLP (C) No.23723 of 2015 in case of Union of India & Ors. Vs. Rakesh Kumar & Ors."

10. Learned counsel for the respondents has not disputed the issue of this circular letter and pendency of their representations dated 03.10.2018 (Annexure A-5).

11. Learned counsel for the applicants has submitted that their grievance would be redressed if a direction is given to the respondents to consider and decide the representation dated 03.10.2018 (Annexure-A-5) of the applicants in the light of circular letter No. No.E(NG)II/2017/ECR/CL/4, dated 27.04.2017 and judgment of Hon'ble Supreme Court passed in Civil Appeal No.3938 of 2017 arising out of SLP (C) No.23723 of 2015 Union of India & Ors. Vs. Rakesh Kumar & Ors.

12. Accordingly, Respondent No.3 or the Competent Authority is directed to decide the representation of the applicants dated 03.10.2018 (Annexure-A-5) in the light of circular letter No.E(NG)II/2017/ECR/CL/4, dated 27.04.2017 and judgment of Hon'ble Supreme Court passed in Civil Appeal No.3938 of 2017 arising out of SLP (C) No.23723 of 2015 Union of India & Ors. Vs. Rakesh Kumar & Ors. by passing a reasoned and speaking order within a period of four months from the date of receipt of a certified copy of this order. No order as to costs.

13. It is made clear that I have not expressed any opinion on the merits of the case.

(Justice Bharat Bhushan)
Member (J)

Sushil