

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 3489 of 2017

New Delhi this the 3rd May, 2019

HON'BLE SH. ASHISH KALIA MEMBER (J)

1. Paras Nath aged 61 years
Helper Group D Retired
S/o Sh. Ram Jiyawan,
Lastly working under Executive Engineer,
Saharanpur, Distt. – Saharanpur (U.P.)

.....Applicant

(By Advocate: Sh. P. S. Khare)

VERSUS

1. Union of India, through
General Manager
Northern Railway
Baroda House,
NEW DELHI
2. Chief Administrative Officer/Construction
Kashmere Gate,
Northern Railway,
Delhi-110006.

.....Respondents

(By Advocate : Sh. Shailendra Tiwary)

ORDER (ORAL)

1.0 This original application is filed by applicant herein seeking following relief-

- to allow the O.A. and direct the respondents to count the entire period of service from the date of

posting/appointment i.e. 29.09.1984 as gangman till superannuation and 50 per cent of service from the date of initial engagement till the date of posting for the purpose of pensionary benefits and other service benefits like MACP and consequentially release and enhanced retiral benefits including interest thereon.

2.0 Brief facts of the case are that applicant was initially engaged as casual labour on 05.10.1978. Thereafter, he has been granted temporary status w.e.f 01.01.1984. Subsequently, this service was regularized without any break on 29.09.1984 as gangman in the grade of Rs. 200-250 (Rs.). The applicant was superannuated on 28.02.2016 after completing the qualifying service. According to the applicant, respondents have wrongly calculated the qualifying service as 26 years and accordingly his retiral benefits have been released.

3.0 Learned counsel for the applicant Sh. P. S. Khare brought to my notice that the judgement of Hon'ble Supreme Court in the matter of **Union of India & Ors. Vs. Rakesh Kumar & Ors.**, where the Hon'ble Supreme Court has held that-

- the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- 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.

4.0 Notice was issued. Department has filed reply thereto and took stand of limitation and territorial jurisdiction. Learned counsel for applicant has drawn my attention to the representation dated 04.04.2017, which is pending before the competent authority, Chief Administrative Officer Railway. Learned counsel for the applicant submitted that the pensionary benefits are not a bounty and is a valuable right in the hands of the employee and having continuous cause of action.

5.0 This Tribunal is of the view that respondents shall consider his representation in terms of the order dated 24.03.2017 by the Hon'ble Apex Court in the matter of Union of India & Ors. Vs. Rakesh Kumar & Ors. stated as under:-

"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."

Accordingly, this O.A. is hereby disposed of. M.A. No. 3708/2017 is allowed.

6.0 This order shall be complied within a period of 90 days. No order as to cost.

(SH. ASHISH KALIA)
Member (J)