

**Central Administrative Tribunal
Principal Bench**

OA No.2626/2013

New Delhi, this the 19th day of February, 2019

Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Sh. Mohd. Jamshed, Member (A)

Shri Bharat Bhushan
Helper Khalasi & 18 Ors.
Under Senior Section Engineer
(PSI) Krukshetra
As per Memo of parties. ... Applicants

(By Advocate: Mrs. Meenu Mainee)

Vs.

Union of India through

1. Secretary
Railway Board
Ministry of Railways,
New Delhi.
2. General Manager
Northern Railway
Headquarters Office, Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway Divisional Office,
State Entry Road,
New Delhi.
4. Sr. Divisional Electrical Engineer
Northern Railway. .. Respondents.

(By Advocate: Ms. Ekta Rani for Shri Kripa Shankar Prasad)

: ORDER (ORAL) :

Justice L. Narasimha Reddy:-

The applicants state that all of them have joined as Casual labourers in certain establishments of Northern Railway, the 2nd respondent herein. It is also stated that on completion of 120 days as Casual Labourers, they have been conferred with temporary status, and thereafter their services were regularised after subjecting to screening, in accordance with the relevant rules.

2. This OA is filed with a prayer to direct the respondents to count 50% of the period during which they were on temporary status, as holding good for pensionary and MACP benefits. The applicants contend that according to the provisions of law in force, they are being extended the benefit of 50% of their service on temporary status for the purpose of pensionary and other benefits, and claim that they are entitled to count remaining 50% of service also. Reliance is placed upon para 20 of Master Circular No.54 of the Railways and the judgment of Hon'ble Supreme Court in ***Union of India & Ors. vs. Rakesh Kumar & Ors.*** Civil Appeal No.3938/2017 decided on 24.03.2017.

3. The respondents filed counter affidavit opposing the OA. It is stated that para 20 of Master Circular comes into play only when a person is appointed on substantive, officiating or temporary basis against a post, and in case of officiating or temporary appointments, it is followed by substantive appointment without any interruption. It is stated that the applicants do not fit into those parameters.

4. We heard Ms. Meenu Mainee, learned counsel for the applicant and Ms. Ekta Rani for Shri Kripa Shankar Prasad, learned counsel for the respondents.

5. The applicants have passed through three phases, namely, as Casual Labourers, temporary status, and thereafter on regular basis. The provisions of law as applicable to the applicants provide for counting of 50% of service rendered with temporary status as holding good for pension and other benefits. The applicants, however, want the entire period to be counted for that purpose.

6. The Hon'ble Supreme Court in **Rakesh Kumar's case** (supra) dealt with the scope of para 20 of Master Circular No.54. The provision reads as under:-

“20....Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post....

From a perusal of this, it becomes clear that it has some salient features. The first is that an employee must take charge of the 'post'. Secondly, the appointment to such post shall be either substantive or on officiating basis or in temporary capacity. Thirdly, in case, it is officiating or on temporary basis, that must be followed by substantive appointment in the same or another service or post, without any break. The applicants are not able to point out as to against which 'post' they have been appointed on temporary or officiating basis. There is no denial of the fact that their substantive appointment came long thereafter.

7. The occasion to count the entire service for an employee who was appointed on officiating or temporary basis would arise, if only, it was followed without interruption, by a substantive appointment. Here again, the applicants are silent on such an important aspect. Unless these relevant facts are placed before the authorities, one cannot expect any clear decision from them.

8. With a view to give a quietus to the issue, we verified from the learned counsel as to whether such particulars are available. However, the answer was in negative.

9. Under these circumstances, we dispose of the OA, leaving it open to the applicants to file a comprehensive representation indicating (a) the post against which they have been appointed on temporary or officiating basis; (b) the date on which such a temporary or officiating appointment was made on substantive basis without any break and (c) to indicate whether the temporary appointment and substantive appointment were intervened by any break. In case the representation is made within four weeks from today, appropriate orders shall be passed within three months thereafter. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/