

**(2020) 09 PAT CK 0166**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 740 Of 2018

Union Of India And Ors

APPELLANT

Vs

Lal Chand Bharati And Ors

RESPONDENT

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**Date of Decision:** Sept. 14, 2020

**Hon'ble Judges:** Sanjay Karol, CJ; S. Kumar, J

**Bench:** Division Bench

**Advocate:** D. K. Sinha, Satyeshwar Prasad, Munna Pd Dixit

**Final Decision:** Disposed Of

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### **Judgement**

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video

Conferencing from their residence.

Heard learned counsel for the petitioners and learned counsel for the Respondents.

Petitioners have prayed for following reliefs:-

(I) “For setting aside/modifying the order dated 12.04.2017 passed in O.A. No. 51/2016 by the learned Central Administrative Tribunal, Patna

Bench, Patna whereby whereunder the O.A. has been allowed with a direction to the respondents/railways to re-fix the pension of the applicant

counting 50% of casual service and 100% of temporary and regular service as qualifying period within three months of receipt of a copy of the order

after which for any delay they shall be liable to pay an interest @ 8% on due payment till the date of payment; and they are also directed to pay a cost

of Rs. 5000/- to the applicant for harassing him and wasting the time of the court;

(ii) For, further, quashing the order dated 22.08.2017 passed in RA No. 41/2017 (arising out of OA No. 51/2016) by the learned Central Administrative

Tribunal Patna Bench, Patna whereby the learned tribunal has dismissed the review application filed by the petitioner/railways for reviewing the  
aforementioned order dated 12.04.2017 passed in OA. No. 51/2016 by brushing aside the principle of law decided by the Honâ€™ble Supreme Court  
regarding counting of temporary status/casual service in judgment dated 24.03.2017 passed in Union of India Vs. Rakesh Kumar reported in  
2017(3)PLJR SC 83 according to which casual service as well as the casual labour with temporary status service is to be reckoned 50% for purpose  
of pension;

(iii) To allow this writ petition in terms of judgment passed by the Honâ€™ble Supreme Court in case of Union of India Vs. Rakesh Kumar reported  
in 2017(3)PLJR SC 83 which has been followed by this Court in similar matters by granting similar relief(s) by order dated 24.07.2017 in C.W.J.C.

No. 5111/2017 â€™The UOI.& Ors Vs. Binod Singhâ€™ and order dated 24.08.2017 in C.W.J.C. No. 4612/2017 â€™The UOI & Ors Vs. Md. Karar  
Husain; and /or

(iv) For grant of any other relief(s) including, waiving the direction of the learned Tribunal (contained in the impugned order Annexure-P/1) to the  
Railways to pay cost of Rs. 5000 and interest @ 8% on due payment till the date of payment for any delay in re-fixing the pension within 3 months, as  
this Court may deem expedient in the interest of justice.â€™

The counsel representing the petitioner/railways submits that decision of Honâ€™ble Apex Court rendered in the case of Union of India Vs. Rakesh  
Kumar since reported in 2017 (3) PLJR SC 83 makes the direction of the tribunal to count 100% service as temporary status employee and 50% of  
service as casual employee for qualifying service for grant of pension in the teeth of ratio of the decision.

The Honâ€™ble Apex Court crystallized the issue in the following manner:-

â€™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 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.â€

In view of judgment and order passed by the Apex Court as referred above and followed by this Court in C.W.J.C. No. 4612 of 2017 (Union of India

and others Vs. Md. Karar Husain) order dated 24.08.2017 and in C.W.J.C. No. 5111 of 2017 (Union of India and others Vs. Binod Singh) order dated

24.07.2017, the judgment and order of the tribunal is modified to the extent that 50% of service rendered as temporary status employee and 50% of

service rendered as casual employee will be counted for the purpose of qualifying service for grant of pension.

With aforesaid modification, this writ petition is disposed of.