

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 538 OF 2008

Wednesday, this the 8th day of July, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Shri. N. Anthony,
Ex-Casual Labourer, Southern Railway,
Palakkad Division, Residing at Maruthipatti,
Morappur (Via) Harur Taluk,
Dharmapuri District.

..... Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
the General Manager, Southern Railway,
Chennai – 3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat.
3. The Assistant Personnel Officer,
S & T & Engg., Southern Railway,
Chennai – 3.

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

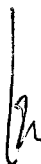
The application having been heard on 08.07.2009, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This Tribunal earlier in O.A. No. 495/2007 had passed inter alia
the following order :-

“The basic stand of the respondents is
that the date of birth now produced on record
by the applicant is different from the entries in
the Casual Labour Service Cards. First of all,
the Casual Labour Service Cards produced
{Annexure R-2(7) and Annexure R-2(8)} do not
have any entries regarding the date of birth in



Column 3. It is only in Column 4, the age at initial casual employment has been declared. This would have been normally declared on approximate basis without any verification of documents. The additional sheets enclosed to the Annexure R-2(7) are also incomplete as it shows the service particulars from 1985 only whereas Annexure R-2(8) shows that he was appointed initially on 31.5.1971. The actual date of issue of these cards is also not visible from the copies produced. If the actual date of birth was indicated in the Casual Labour Cards and there is a discrepancy in the records now produced by the applicant, the stand of the respondents would have been justifiable. But in the absence of any entry regarding date of birth in these cards, it is not correct to deny the authenticity of the record at Annexure A-5 which is an extract of the Birth Register now produced by the applicant. I agree with the arguments of the counsel for the applicant that if an authenticated document such as Annexure A-5 regarding date of birth has been produced, it should prevail over all the declarations etc., if any, made regarding the date of birth. It is also seen that the certificate given by the Village Officer at Annexure R-2(3) based on the enquiries made in the village also shows that the applicant was born on 27.12.1959. Since his appointment now as Trackman in Group D constitutes an entry into regular Group D service, it is necessary in terms of Railway Ministry's decision, as correctly stated by the respondents, that the declaration about the date of birth should be based on proper documentary evidence. Such proper documentary evidence in respect of date of birth is the extract from the Birth Register. There cannot be any other document more authentic than this certificate. When the applicant has produced such an authenticated document as required under Rule 225, there is no further requirement to verify any other collateral evidence in this matter. The ingredients required in the stipulation of Railway Ministry's decision at (a) under Rule 225 are fully satisfied by the production of Annexure A-5 document. The Screening Committee has also after verification of this document and medical examination found him fit and issued the offer of appointment. It is seen that the applicant has submitted an appeal (Annexure A-6) before the General Manager pointing out this rule position and it is still

pending before the said authority. Therefore, I am of the view that this O.A can be disposed of, at this stage, by a direction to the 1st respondent i.e. the General Manager, before whom the appeal of the applicant is pending, to consider Annexure A-6 representation of the applicant in the light of the position as stated above and to communicate a decision to the applicant within a period of one month from the date of receipt of a copy of this order. I, accordingly, do so. O.A is disposed of. No order as to costs."

2. In pursuance of the above, the respondents have considered the case of the applicant. The representation considered by the respondents inter alia reads as under :-

"I had produced the birth certificate issued by the Deputy Tahsildar, Harur and the transfer certificate issued by the Headmaster, Govt. LPS, Maruthipatti. True copies of the said certificates are enclosed herewith. These certificates are the authenticated certificates regarding the date of birth and have to be accepted in preference to any other certificates. I have not produced any certificates at the time of my engagement in Railway. The date of birth recorded in my service card was not on the basis of any documents. The mistake in the service card has to be corrected on the base of the certificate produced by me."

3. The decision by the authorities as communicated vide impugned order at Annexure A8 reads as under :-

" I have gone through the representation and Hon'ble Central Administrative Tribunal's orders. I have also read the discussion in the judgment.

From the representation, I do not find any fresh fact, that has been presented or on the basis of which the applicant merits a reconsideration.


He is apparently a school educated person and therefore intelligent enough to know

the sanctity of the documents giving the date of birth. He has caused confusion in the administration's mind by his own acts. Therefore, I am in agreement with the action taken by the division."

4. The applicant has challenged the above decision on the final ground that the above decision was not in accordance with the directions of this Tribunal cited above.

5. Pleadings were completed and the respondents have taken the same stand that the applicant is not entitled to any relief on account of his age.

6. Counsel for the applicant submitted that the order of this Tribunal in the earlier round of litigation is crystal clear and specific. A definite finding has been rendered by the Tribunal to the effect that authentic document for date of birth purposes is the Birth Register as certified by the Tahsildar. It was the Tahsildar certificate that was referred to by the applicant in his representation. The Tribunal specifically directed the respondents to consider the representation of the applicant "in the light of the position as stated above" vide the order of this Tribunal extracted above. Thus what was expected of from the respondents is to consider the representation of the applicant keeping in view the finding of this Tribunal. Any decision to ignore the certificate furnished by the applicant would amount to sitting in appeal over the decision of this Tribunal which is certainly impermissible. Thus, it can be safely stated that the respondents have not acted as per the directions of this Tribunal. Had the respondents felt that the order of this Tribunal in the earlier OA was erroneous for any




reason, they should have approached the High Court challenging the same. That has not been done. The finding has become final.

7. In view of the above, this OA is allowed. The impugned order dated 06.03.2008 is quashed and set aside. The General Manager, Southern Railways is directed to consider afresh the representation of the applicant vide Annexure A6 keeping in view the findings of this Tribunal in its order dated 05.02.2008 and consider the case of the applicant for compassionate appointment. This drill shall be performed by the Respondent No.1 within a period of 4 months from the date of communication of this order.

8. Under the above circumstances, no costs.

Dated, the 8th July, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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