

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.No.615/2007  
Dated the 7<sup>th</sup> day of April, 2008**

**CORAM :**  
**HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

M.P.Thankam,  
Retrenched Casual Labourer,  
Southern Railway, Palghat  
Resident of Moorkkathupadi, Pallipuram P.O.,  
Pattambi (Via) Palghat Distict. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India  
represented by General Manager,  
Southern Railway, Headquarters Office,  
Park Town, Chennai-3.
- 2 The Divisional Railway Manager,  
Southern Railway, Palghat Division  
Palghat.
- 3 The Sr.Divisional Personnel Officer,  
Southern Railway, Palghat Division  
Palghat. ... Respondents

By Advocate Mr.Ajay for Mr.P.Haridas

The application having been heard on 07.04.08 the Tribunal on the same day delivered the following

(ORDER)

**Hon'ble Mr.George Paracken, Judicial Member**

This is the third round of litigation by the applicant for her absorption against a Group 'D' post and for the consequential benefits on par with her juniors in the matter of seniority of the retrenched casual



labourers of Southern Railway, Palghat Division.

2 The brief facts of the case are that the applicant is a retrenched casual labourer of the Southern Railway, Palghat Division with 276 days of service at her credit and her name has been recorded in the Live Register maintained by the Respondents at Sr. No. 775. She had earlier approached this Tribunal vide OA 589/05 against the denial of her absorption by the Respondents for non production of date of birth certificate and casual labour card. The said OA was allowed vide Annexure A-7 order dated 31.8.2006 and it was declared that the applicant was entitled to be screened subject to her fulfilling the requirements on the basis of the details contained in the Live Casual Labour Register. It was also declared that in the event of her clearing the screening, she should be considered for absorption in accordance with the relevant rules and regulations on the subject. Persuant to the aforesaid order, the respondents again called her for screening vide Annexure A-8 order dated 14.11.2006 but rejected her case vide Annexure A-9 letter dated 12.1.2007 without giving any reasons. Therefore, she again approached this Tribunal vide OA 118/07 challenging the aforesaid letter dated 12.1.2007 and it was disposed of by order dated 3.5.2007 with a direction to the respondents to pass fresh order giving full reasons as to why her claims were rejected. As a consequence of the aforesaid directions, the respondents have passed the impugned Annexure A-1 order dated 4.7.2007. They have submitted that in compliance of the aforesaid order of this Tribunal, a Committee of three officers were constituted and they



verified the documents like the LTI Register, Live Casual Labour Register and the documents produced by the Applicant. As regards the Casual Labour Card is concerned, the Committee exempted her from producing the same as directed by this Tribunal earlier. However, the Committee has found discrepancy in the matter of her date of birth when her case was examined in terms of para 225 (1), 225 3(a) and Railway Ministry's decision © of IREC (Vol.I) which are extracted below:-

"Para 225(1): Every Person, on entering Railway Service shall declare his date of birth which shall not differ from any declarations expressed or implied for any public purpose before entering Railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the Railway servants own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior Railway servant and witnessed by another Railway servant.

Para 225 (3) (a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation e.g. If a person enters service on 1<sup>st</sup> January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1<sup>st</sup> January 1962.

Railway Ministry's decision © of IREC Vol.I: In the case of Group D employees care should be taken to see that the date of birth is declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as Casual Labourer or as a Substitute."

The Applicant declared her age as 22 years at the time of her initial engagement on 28.12.81. In terms of the aforesaid provisions in the IREC and the Railway Board's decision, the respondents derived her date of birth as 28.12.1959. However, the age declared by her as on 22.8.90 through an affidavit was 23 years and accordingly her date of birth should



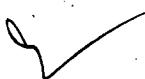
have been 22.8.67. Since the date of birth declared by the Applicant at the time of her initial engagement as casual labour is different from the one given subsequently in the Affidavit, the Respondents rejected her request for absorption in terms of Rule 225 (3) (a) referred to above.

3 I have heard Advocate Ms.Rejitha for Mr.T.C.G.Swamy for the Applicant and Advocate Mr.Ajay representing Mr.P.Haridas for the Respondents. It is an admitted position that at the time of initial engagement as casual labourer, the respondents are relying upon the oral declaration of age made by the applicant and not on the basis of any age certificates furnished by them from the concerned authorities. In such cases, the date of birth of the casual labour is derived under Rule 225 (3) (a) of the IREC. Since the applicant had declared her age as 22 years at the time of her initial engagement, the respondents have assumed her date of birth as 28.12.1959. The applicant claims herself to be an illiterate person and does not possess any age certificate issued by the educational/civil authorities. The respondents have therefore, accepted the Affidavit of age produced by her sworn before a First Class Judicial Magistrate. According to the said Affidavit, the applicant was 23 years as on 22.8.90 and her date of birth was derived as 22.6.1967. There is a significant difference of approximately 8 years between the age declared by the Applicant at the time of her initial engagement as casual labour and the age as declared by her in her sworn affidavit. As the declaration of age made by the Applicant in the sworn affidavit is to be taken as true, the Applicant has secured the initial engagement as casual labour on 28.12.81



as a minor when she was just 14 years old.

4 This Tribunal has considered several cases where there were discrepancies with regard to the date of birth of the casual labourers. In OA 111/07 decided by this Tribunal on 25<sup>th</sup> July, 2007 (Annexure A-11), the applicant, on the date of her initial engagement on 21.12.1981 declared her age as 24 years, and the Respondents have derived her date of birth as 21.12.1957 as per Para 225(3)a of IREC Vol.I. In other words, she was 18 years and almost three months at the time of her initial engagement. In the affidavit subsequently submitted by her, the date of birth was shown as 22.8.63. Since, there was a difference of about 6 years between the date of birth declared by the Applicant at the time of her initial engagement and the age as declared in the affidavit, the respondents were directed to refer her to the competent medical authorities of the Railways to determine her actual age. In that case, if the age of the applicant therein, as given by her in the Affidavit tallies with her age as determined by the medical authorities, she was directed to be absorbed as a Group 'D' employee in the Palghat Division of the Southern Railway from the date her junior in the Live Register has been appointed with all consequential benefits such as fixation of pay with reference to the date of appointment of her junior, seniority, etc. It was also ordered that applicant being an illiterate, the difference between the actual age as determined by the medical authorities and the age as given in the Affidavit to the extent of one year shall be ignored. This Tribunal has passed similar orders in OA 109/07- K.Leela V/s. Union of India & Ors and OA 121/07-K.Shanta V/s. Union of India &



Ors also. However, the facts in the present case are different. The actual age of the Applicant, as per the affidavit submitted by her is 22.8.1967. On the date of her initial appointment as casual labourer as on 28.12.1981, she declared that she was 22 years. Because of the said declaration the Respondents had to engage her as casual labourer though she was minor at time.

5 In the above circumstances, in the first instance, I direct the Respondents to refer the Applicant to the Medical authorities to ascertain her actual age. Thereafter, the Respondents shall take appropriate decision regarding her absorption as a regular Group 'D' employee as in the case of other eligible casual labourers. This process shall be completed within three months from the date of receipt of this order. There shall be no orders as to costs.



(GEORGE PARACKEN)  
JUDICIAL MEMBER

abp