

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.84/2007

Thursday this the 16th day of August, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

N.Viswanathan, aged 43 years
S/o Narayanan,
Retrenched Casual Labourer,
Southern Railway, Palghat Division,
residing tKallamparambu, Puduppariyaram,
Dhoni Post Office, Palght District

(By Advocate Mr. T.C.Govindaswamy)

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

(By advocate Mr. Thomas Mathew Nellimootil)

The application having been finally heard on 9.8.2007, the Tribunal on 16.8.2007 delivered the following:

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ORDER

Hon'ble Mr. George Paracken, Judicial Member

This is the second round of litigation by the applicant who is a retrenched casual labourer and whose name has been recorded in the Live Register maintained by the respondents at Sl.No.1295. In response to the respondents' earlier notification dated 12.3.2003, the applicant reported to their office but failed to produce the original casual labour card. Again he was given another opportunity on 9.10.2003 but he again did not produce the original casual labour card. The Screening Committee, therefore, did not recommend him for absorption and he was informed accordingly by the Annexure.A3 letter dated 22.3.2004 and Annexure.A4 letter dated 26.4.2005.

2 Aggrieved by the aforesaid action of the respondents, he had earlier filed OA.463/2005 before this Tribunal and vide Annexure.A5 order dated 31.8.2006 this Tribunal quashed and set aside the Annexure.A3 letter dated 22.3.2004 rejecting his request for absorption on the ground of non-production of original casual labour service card and directed the respondents to consider his case for necessary screening subject to his fulfilling the requirements on the basis of the details contained in the Live Casual Labour Register and in the event of his clearing the screening, he should be considered for absorption in accordance with the relevant rules and regulations on the subject. The identity of the applicant was directed to be verified by comparing his Left Thumb Impression with that of the Left Thumb Impression available in the LTI Register.

3 Thereafter, on the basis of the Annexure.A6 letter dated 14.11.2006 issued to him by the respondents, the applicant reported the

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Divisional Office on 24.11.2006 with necessary documents. However, after verifying the documents available with the respondents and those produced by the applicant, the Screening Committee again did not recommend him for absorption and informed him accordingly vide the impugned A.1 order dated 12.1.2007, but without assigning any reasons. Hence he has filed the present O.A.

4 In the reply to this OA, the respondents have indicated that the reasons for his non-absorption was due to certain discrepancies in records relating to his age. On verification of the School Admission Certificate produced by him, it was seen that his date of birth was recorded as 15.6.62 but at the time of his initial engagement as a Casual Labour on 2.7.84 he had indicated his age as 20 years and the same was recorded in the LTI Register also. Therefore, according to the respondents, his date of birth should have been 2.7.64 instead of 15.6.62 as recorded in the certificate produced by the applicant. In this regard, they have relied upon the rules relating to acceptance of date of birth as laid down in para 225(1), 225(3)(a) and Railway Ministries decision below Rule 225 of the 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 declaration 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 Servant's own handwriting. In the case of the 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 eg. If a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.



Railway Ministry's decision below Rule 225 of IREC Vol.I:
in the case of Group D employees, care should be taken to see that the date of birth as 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."

5 Explaining the above provision of Rules, they have submitted that in terms of Rule 225(3)(a), when a person enters service giving his/her age, he/she should be assumed to have completed the stated age on the date of attestation. In accordance with Rule 225(1), the date of birth declared on entering railway service shall not differ from any declaration expressed before entering Railway service. As per Railway Board decision contained below Rule 225 of IREC Vol.I, the date of birth as declared on entering regular Group 'D' service should not be different from any declaration express or implied, given earlier at the time of employment as a Casual Labour or as a substitute.

6 I have heard Mr. Abdul Sammad for the applicant and Mr. Varghese John appearing on behalf of Mr. Thomas Mathew Nellimootil for the respondents. In my considered opinion, the respondents' stand in considering the applicant for absorption is not very reasonable. Their initial objection was that the Applicant was not in possession of the original Casual Labour Card. As there were sufficient other documents to prove his earlier period of engagement as Casual Labour and to establish his identity, this Tribunal rejected the aforesaid contention of the respondents and directed them to consider his case for absorption ignoring the requirement of producing the original Casual Labour Card but subject to fulfilling other conditions. Now they have raised this new objection regarding the discrepancy in his date of birth. It is seen that the applicant

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never declared his date of birth at the time of initial engagement as casual labour on 2.7.1984. He had only stated that he was 20 years old. The respondents had assumed his date of birth as 2.7.1964 in terms of Rule 225 (3) (a) of the IREC Vol.I quoted above. The said provision of Rule is applicable only in those cases where the person entering the service is unable to give his/her date of birth. There is no such case here. He was not required to give his date of birth at the time of initial engagement as Casual Labourer. It was sufficient for him to state his age. The respondents themselves have not insisted upon the applicant to furnish his date of birth and the proof thereof at the initial stage of engagement as casual labourer. He was required to produce the documents regarding his date of birth for the first time only on 24.11.2006. According to the School Admission Register produced by him, his date of birth is 15.6.1962. Since the Applicant himself has not declared his date of birth at the time of his initial engagement as casual labourer, it was only the presumption of the respondents, that too without any valid reason, that his date of birth was 2.7.1964. It is also seen that the difference between the assumed date of birth of the applicant by the respondents and his actual date of birth as per the School Admission Register produced by him is only two years and one month. Moreover, the applicant has claimed his date of birth as 15.6.1962 which is an earlier date than the assumed date of birth of the applicant as 2.7.64 by the respondents. Applicant is not going to unduly benefit by claiming his date of birth as 15.6.1962. Rather his total service will be reduced by over two years, by accepting his date of birth as 15.6.62.

7 In the above facts and circumstances of the case, the OA is allowed and the contentions of the respondents regarding the discrepancy

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in the date of birth of the applicant are rejected. I do not see any further scope for the respondents to consider the case of the applicant. I, therefore, direct the respondents to treat the date of birth of the applicant as 15.6.1962 and absorb him as a Group 'D' employee in the Palghat Division of the Southern Railway from the date his 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 his junior, seniority etc. However, the applicant will not be entitled for any arrears of pay and allowances. The respondents shall implement this order within two months from the date of receipt of this order. Since this is the second round of litigation by the applicant, in case the respondents fail to implement this order within the aforesaid time limit, the applicant will be entitled to full pay and allowances at the rate notionally arrived at, from the date after the expiry of the aforesaid time limit. There shall be no order as to costs.

Dated this the 16th day of August, 2007



GEORGE PARACKEN
JUDICIAL MEMBER

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