

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No.87/07

Monday this the 11th day of June, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

R.Sahadevan, aged 44 years
 S/o Raman
 Retrenched Casual Labourer,
 Southern Railway, Palghat Division,
 residing at Valakad House, Nechipully PO
 Mundur, Palghat District.Applicant

(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.Respondents

(By Advocate Mr. Thomas Mathew Nellimootil)

The application having been finally heard on 11.6.2007, the Tribunal on the same day delivered the following:

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.1268. In response to the respondents' notification dated 12.3.2003, the applicant reported to their

office for verification of the requisite documents including the original casual labour card. As the original casual labour card was not available with him, he was unable to produce the same before the Screening Committee. He could produce only the Muster extract. The Screening Committee, therefore, did not recommend him for absorption on the sole ground that he had not produced the original casual labour service card and he was informed accordingly by the Annexure.A3 letter dated 22.3.2004.

2 Aggrieved by the aforesaid action of the respondents, he filed OA.437/2005 before this Tribunal and this Tribunal quashed the said letter dated 22.3.2004 rejecting his request for absorption on the ground of non-production of original casual labour service card after observing that the respondents maintain a "Thump Impression Register" with which the identity of the person could have been easily verified. This Tribunal also observed that when the name of the applicant was available in the Live Register and the particulars of period of engagement were also available, nothing more was required to be verified or cross verified. This Tribunal also observed that in order to avoid any impersonations, nothing more was more authentic and fool proof than the finger print of the applicant as available in the "Thumb Impression Register" maintained by the respondents. The respondents, were, therefore, directed to consider the case of the applicant for necessary screening subject to his fulfilling of other conditions. The respondents were also directed to take into consideration the details as contained in the Live Register while verifying the period of service etc. of the applicant. As regards age limit, respondents were directed to deduct from the age the time spent in

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prosecuting the case.

3 In terms of the aforesaid orders of this Tribunal, a Screening Committee once again verified the documents available with the respondents and those produced by the applicant. The Screening Committee again did not recommend the applicant for his absorption and informed him accordingly vide the impugned A.1 order dated 21.7.2004 without assigning any reasons. However, in the reply to this OA, the respondents have submitted that the reason for his non-absorption was due to certain discrepancies in records relating to his age. Vide the Annexure A6 letter dated 14.11.2006 the applicant was asked to report to the office of the Respondents on 24.11.2006 with necessary documents. On verification of the extract of School Admission Register produced by him, it was seen that his date of birth was recorded as 28.4.1962. At the time of his initial engagement as a casual labour on 2.7.84, he had indicated his age as 22 years and the same was recorded in the LTI Register. Therefore, according to the respondents, his date of birth should have been 2.7.62 instead of 28.4.62 as recorded in the extract of School Admission Register produced by the applicant. In view of the aforesaid variation in the date of birth, his case for absorption was rejected. 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

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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."

4 Explaining the above provision of Rules, they have submitted that in terms of Rule 225(3)(a), when a person enters service giving his age, he 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.

5 In the rejoinder, the applicant submitted that the respondents have never raised any such objections regarding the date of birth earlier. The fresh reason for rejection now given by the respondents is an afterthought and it was only to get over the earlier directions of this Tribunal as the impugned Annexure.A1 order is silent of any such reasoning and only in the reply statement, the respondents have indicated the reasons. He has also submitted that he had never declared his date of birth at the time of his initial engagement as he was not required to do so and the

respondents' presumption that his date of birth should be 2.7.1962 based on his declaration that his age was 22 years at the time of initial engagement on 2.7.1984 would not stand to any reason.

6 I have heard Mr. T.C.Govindaswamy for the applicant and Shri Thomas Mathew Nellimootil for the respondents. In my considered opinion, the respondents have not taken a reasoned and consistent stand in considering the case of the applicant for absorption. Their initial objection was that the Applicant was not in possession of the original Casual Labour Card when there were sufficient documents available with them to prove his earlier period of engagement as Casual Labour and to establish his identity. When this Tribunal has rejected the aforesaid contention of the respondents and directed them to consider the case of the applicant for absorption ignoring the requirement of producing the original Casual Labour Card but subject to fulfilling other conditions, they have raised the new objection regarding the discrepancy in his date of birth. It is seen that the applicant 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 22 years old. The respondents had assumed his date of birth as 2.7.1962 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 a person entering the service with the Railways is unable to give his date of birth. There is no such case here. Neither he was asked for nor he was required to give his date of birth at the time of initial engagement as Casual Labourer. It was sufficient to state his age at that time. 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.

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He was required to produce the documents regarding his date of birth for the first time only on 24.11.2006 when his case for absorption in the Railways was being considered. He produced the most authentic document, namely, the extract of the School Admission Register indicating his date of birth as 28.4.1962. 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 should have been 2.7.1962. In my considered opinion, the provisions contained in Para 225(1), 225(3)(a) and Railway Ministry's decision (c) below Rule 225 of Indian Railway Establishment Code(IREC) Vol.I would not apply in this case. 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 extract of the School Admission Register produced by him is only little over 2 months. Moreover, the applicant has claimed his date of birth as 28.4.1962 which is an earlier date than the assumed date of birth of the applicant by the respondents. Applicant has no way unduly benefited by claiming his date of birth as 28.4.1962. Rather his total service will be reduced by over 2 months, if the respondents would have accepted his date of birth as 28.4.1962.

7 In the above facts and circumstances of the case, the OA is allowed and the contentions of the respondents regarding the discrepancy 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 as the Screening Committee has already considered the case of the applicant twice earlier but rejected his request for absorption for wrong reasons. I,

therefore, direct the respondents to treat the date of birth of the applicant as 28.4.1962 and absorb him as a Group 'D' employee in the Palghat Division of the Southern Railway with all consequential benefits such as seniority, fixation of pay etc., from the date his junior in the Live Register has been appointed. 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 11th day of June, 2007



GEORGE PARACKEN
JUDICIAL MEMBER

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