

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.90/2007

Wednesday this the 25th day of July, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

T.V.Indira, aged 41 years
W/o Velayudhan,
retrenched Casual Labour,
Southern Railway, Palghat Division,
residing at ThoniparambuHouse,
Mankurussi PO, 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 18.7.2007, the Tribunal on 25.7.2007 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.1126. In response to the respondents' notification dated 12.3.2003, the applicant reported to their office but failed to produce the original casual labour card. Again she was given another opportunity on 9.10.2003 but she again did not produce the original casual labour card. The Screening Committee, therefore, did not recommend her for absorption and she was informed accordingly by the Annexure.A3 letter dated 22.3.2004.

2 Aggrieved by the aforesaid action of the respondents, she filed OA.461/2005 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 her request for absorption on the ground of non-production of original casual labour service card and declared that the applicant is entitled to be screened subject to her fulfilling the requirements on the basis of the details contained in the Live Casual Labour Register and 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. The respondents were, therefore, directed to call the applicant for screening and take further action.

3 In terms of the aforesaid orders of this Tribunal, the respondents have constituted the Screening Committee again. After verifying the documents available with the respondents and those produced by the applicant on 24.11.2006, the Screening Committee again



did not recommend the applicant for her absorption and informed her accordingly vide the impugned A.1 order dated 12.1.2007 but without assigning any reasons. However, in the reply to this OA, the respondents have indicated that the reasons for her non-absorption was due to certain discrepancies in records relating to her age. On verification of the Certificate produced by her, it was seen that her date of birth was recorded as 10.2.1964 but at the time of her initial engagement as a Casual Labour on 2.7.84 she had indicated her age as 19 years and the same was recorded in the LTI Register also. Therefore, according to the respondents, her date of birth should have been 2.7.65 instead of 10.2.1964 as recorded in the certificate produced by the applicant. In view of the aforesaid variation in the date of birth, her 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 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/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.

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. She has also submitted that she had never declared her date of birth at the time of her initial engagement as she was not required to do so. She has also submitted that the respondents' presumption that her date of birth should be 2.7.1965 based on her declaration that her age at the time of initial engagement on 2.7.1984 as 19 years would not stand to reason. She had produced the very same certificate to prove her date of birth during 2003 and again in 2005. The respondents at that time did not raise any objection regarding the certificate and the date of birth and they have



rejected her candidature for the sole reason that she had not produced the original casual labour card.

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' 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 her earlier period of engagement as Casual Labour and to establish her identity, this Tribunal 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. Now they have raised this new objection regarding the discrepancy in her date of birth. It is seen that the applicant never declared her date of birth at the time of initial engagement as casual labour on 2.7.1984. She had only stated that she was 19 years old. The respondents had assumed her date of birth as 2.7.1965 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. She was not required to give her date of birth at the time of initial engagement as Casual Labourer. It was sufficient for her to state her age. The respondents themselves have not insisted upon the applicant to furnish her date of birth and the proof thereof at the initial stage of engagement as casual labourer. She was required to produce the documents regarding her date of birth for the first time only on 24.11.2006. According to the Certificate produced by her, her date of birth is 10.2.1964.



Since the Applicant herself has not declared her date of birth at the time of her initial engagement as casual labourer, it was only the presumption of the respondents, that too without any valid reason, that her date of birth was 2.7.1965. 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. It is also seen that the difference between the assumed date of birth of the applicant by the respondents and her actual date of birth as per the certificate produced by her is only little over one year. Moreover, the applicant has claimed her date of birth as 10.2.1964 which is an earlier date than the assumed date of birth of the applicant as 2.7.65 by the respondents. Applicant has in no way unduly benefited by claiming her date of birth as 10.2.1964. Rather her total service will be reduced by over one year, by accepting her date of birth as 10.2.1964.

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. I, therefore, direct the respondents to treat the date of birth of the applicant as 10.2.1964 and absorb her 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. 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

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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 25th day of July, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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