

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 91 of 2010

Wednesday, this the 2nd day of June, 2010

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

V. Chandrasenan Nair alias Chandrasekharan Nair,
S/o. Velayudhan Nair, (Retrenched Casual Labourer),
residing at Vadakke Ayaniarathala, Perumpazhathoor (P.O.),
Neyyattinkara, Thiruvananthapuram District.

Applicant

(By Advocate – Mr. P.K. Madhusoodhanan)

V e r s u s

1. The Senior Divisional Personnel Officer, Southern
Railway, Divisional Office (Personnel Branch),
Trivandrum-685 914.

2. Union of India, represented through the General Manager,
Southern Railway, Park Town,
Chennai-600 003.

Respondents

(By Advocate – Ms. Sheeba for Mr. Sunil Jacob Jose)

This application having been heard on 25.5.2010, the Tribunal on
02-06-10 delivered the following:

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this OA challenges the denial of consideration for his absorption in the Railway Service and seeks a direction to the respondents to consider his representation against the denial of absorption in accordance with law after affording him an opportunity of being heard.

2. The applicant is a retrenched casual labourer belonging to Trivandrum Division of the Southern Railway. As per the decision in O.A. No. 514/2006 and connected cases, he is eligible to be considered for absorption in the Trivandrum Division of the Southern Railway. Consideration is denied on the ground that the SSLC book No. A 078099 submitted by him in proof of his date of birth is tampered with and overwritten. His name is shown as Chandrasenan Nair.V in the SSLC book. While working as casual labourer from 19.01.1979 to 15.08.1979 under PWI(CN)/TVC and 16.08.1979 to 15.12.1980 under PWI(CN)/TVC, he was working as Motor Mechanic in the workshop of M/s. Manian Motors, Alumoodu, Neyyattinkara, from 05.01.1979 to 10.06.1981 on daily wages which showed that he worked in two organizations at a time or had not worked as a casual labourer in the Railway. Under the circumstances, he was denied consideration for absorption in the Railway service.

3. The applicant submits that he had submitted original documents like SSLC book, service labour card, copy of ration card, voter's identity card etc. to the 1st respondent. As there are differences in the name entered in the casual labour card by the PWI (Construction) and the other original documents he had submitted vide Annexures A-5 and A-6 for consideration of the 1st respondent. He had submitted Annexure A/4 representation dated 02.03.2009 explaining the overwriting in the original records. The applicant submits that the action on the part of the respondent No.1 in not considering the A-4 representation after affording him an opportunity of being heard is unjust and against the principles of natural justice. He further submits that there is no reason for the applicant at all to tamper with the date of birth in the SSLC book as the age limit is not applicable to the casual labourers included in the list for absorption. Therefore, the finding that the applicant tampered with the date of birth for his undue benefit is unfair and

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unfortunate. It is evident from Annexure A-5 affidavit that both the names Chandrasenan Nair and ChandraSekharan Nair belong to the applicant. Therefore, the applicant should not be denied absorption in the Railway Service.

4. The respondents have contested the O.A. It was submitted that as a person seeking appointment in a Government organisation, the applicant is expected to be in possession of documents free from suspicion. In the seniority list of retrenched casual labourers, one Shri Chandrasekharan Nair is shown at sl. No. 2098 with 654.5 days of service. But the person at sl. No. 2098 need not be the applicant as he has not produced any corroborating documents like casual labour card in proof of casual labour service. The SSLC book was verified from the school where he studied. It was revealed that the name of the person shown in the documents as V.Chandrasenan Nair whereas the applicant's name is V. Chandrasekharan Nair. If the writing of his name in the casual labour card by the authority in the construction unit was not correct he could have stated the same at the time he reported in the office for absorption. The documents produced by him are not proving his identity. Therefore, the O.A. may be dismissed as devoid of merit.

5. Arguments were heard and the documents perused.

6. The eligibility of the applicant for consideration of absorption in the Railway service having been established in OA No. 514/2006, the applicant was advised to report to the Divisional office, Personnel Branch of Southern Railway, Trivandrum, along with relevant documents in original. The respondent authority has found overwriting in the SSLC book of the applicant in page No.3. The date of birth is shown in figure as 11.11.1953 and in words as 11.11.1955 with overwriting. The

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respondent authority concludes that the applicant has altered the date of birth to get undue benefit and the applicant has failed to give correct date of birth with proof. In the School Certificate the applicant's name is shown as Chandrasenan Nair and in the casual labour card as well as in the merged seniority list his name is shown as V. Chandrasekharan. There is also tampering in the casual labour service card. From the certificate produced from M/s. Manian Motors, Alumoodu, Neyyattinkara, it is seen by the respondents that the applicant was working in two organizations at a time or had not worked as casual labourer in Railway. The Headmistress of the Government High School, Neyyattinkara, has written to the Divisional Personnel Officer, Southern Railway, Trivandrum, a letter dated 12.08.2008, which is reproduced as follows:

"Ph:2222434

Office of the Headmistress/Headmaster
Govt. Higher Secondary School
Neyyattinkara 695 121

No. 142/08 dtd. 12.08.08

Date : 12/8/08

To

The Divisional Personal Officer,
Southern Railway, Trivandrum

Sub: Verification of School Certificate.

Ref: Your Ir. No. V/P.407/I/ECL/Vol. XI (Pt.II) dt. 11-8-08.

With reference to your letter cited, it is advised that as per records of this School Sri Chandrasenan Nair. V, S/o. G. Velayudhan Nair, Vadakke Ayaniyarakkara Veedu, Perumpazhuthoo, has studied in this School from VIIIth Std to Xth Std during the year 1967-68 to 1970-71 and failed in the SSLC Exam held in March 1971 with Reg. No. 57324. His admission No. is 2211 and date of birth is 11-11-1953. These details are available in the attendance register of XC Std for the year 1970-71. While making entry in the available admission register, the name is erroneously entered as V. Chandrasekharan Nair, S/o. G. Velayudhan Nair of the above address.

However the SSLC certificate appears to be tampered and the date of birth corrected as 11-11-1955.

Seal
Dated

yours faithfully
Sd/-
E. Annakutty
Headmistress
Govt. Boys H.S.S.
Neyyattinkara 695121
Thiruvananthapuram Dist."



7. With regard to the name, the letter above states that while making entry in the available admission register the name is wrongly entered as V. Chandrasekharan Nair, S/o. G. Velayudhan Nair. From this, it is clear that Shri Chandrasenan Nair V. and V. Chandrasekharan Nair is one and the same person. However, the respondent authority has ignored this fact.

8. With regard to tampering in respect of the date of birth, the respondent authority assumes that the applicant had altered the date of birth for his undue benefit. This is an assumption which is not proved. The applicant is all along claiming that his date of birth is 11.11.1953 which is the earlier date and there is no harm in accepting the same as correct date of birth. None of the tampering either in the SSLC book or in the casual labour card gives the applicant any undue benefit. If there are two different dates of birth and if there are two figures as to the number of days of service whichever date or number which is least advantageous to the applicant can be taken.

9. Regarding working in two organizations at the same time, the applicant has given a reasonable explanation at Annexure A-4 representation.

10. All these aspects should have been considered in a dispassionate manner after giving an opportunity of being heard to the applicant. This would have been in accordance with the principles of natural justice. Annexure A-3 letter denying consideration of the applicant for absorption in Railway, *prima facie*, shows a hastiness on the part of the respondents to deny the applicant's consideration somehow. The reasons shown therein for rejection for consideration of absorption are not strong enough in the face of the eligibility of the applicant for consideration

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established in the order in OA No. 514/2006. Therefore, in the interest of justice, Annexure A-3 order dated 02.02.2009 denying the applicant's consideration for absorption in Railway has to be quashed. In the facts and circumstances of the case, the respondents should dispassionately and untrammelled by the tampering in the documents submitted by the applicant consider the case of the applicant after giving him an opportunity of being heard on all the points of doubt that have arisen in the mind of the respondents authorities. Accordingly, the OA deserves to be allowed.

11. In view of the above discussion, the O.A. is allowed. The order at Annexure A-3 dated 02.02.2009 is hereby quashed and set aside. The respondents are directed to reconsider the case of the applicant for absorption in the light of the decision in O.A. No. 514 of 2006 in the manner shown above. No order as to costs.

(Dated, the 2nd June, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.