

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.108/2007

Wednesday this the 25<sup>th</sup> day of July, 2007CORAM*HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER*

*R.Muniappan, aged 40 years*  
S/o Ramaiyan, Ex-Casual Labourer,  
Southern Railway, Palghat Division,  
residing at EVR Street, Vengal Post,  
Karur District, Tamil Nadu. ....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 Senior Divisional Personnel Officer,  
Southern Railway, Palghat Division,  
Palghat. ....Respondents

(By Advocate Ms. P.K.Nandini)

The application having been finally heard on 18.7.2007, the Tribunal on 25.7.2007 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.872. In response to the respondents' notification dated 12.3.2003, the applicant reported to their office and on verification of the documents submitted by him, it was seen

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that he had not produced the original casual labour card and proof of date of birth and he was asked to produce those documents before the Screening Committee on 8.10.2003. Since he failed to produce the aforesaid documents, the Screening Committee 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.A5 letter dated 20.3.2004.

2 Aggrieved by the aforesaid action of the respondents, he filed OA.481/2005 before this Tribunal. Vide order dated 31.8.2006 this Tribunal quashed the said letter dated 20.3.2004 rejecting his request for absorption on the ground of non-production of original casual labour service card and allowed the O.A. 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 of the applicant as contained in the Live Casual Labour Register and to absorb him in accordance with the relevant rules and regulations on the subject in the event of clearing the screening.

3 In terms of the aforesaid orders of this Tribunal, a Screening Committee was again met on 24.11.2006 and 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 12.1.2007 but without assigning any reasons. However, in the reply to this OA, the respondents have submitted that the reasons for non-absorption of the applicant was due to certain discrepancies in records

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relating to his age. On verification of the Certificate produced by him, it was seen that his date of birth was recorded as 7.12.1967. At the time of his initial engagement as a casual labour on 22.10.1981, he had indicated his age as 20 years and the same was recorded in the LTI Register. Therefore, according to the respondents, his date of birth should have been 22.10.1961 instead of 7.12.1967 as recorded in the Certificate produced by the applicant. In view of the aforesaid discrepancy 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 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

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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 22.10.1961 based on his declaration that his age was 20 years at the time of initial engagement on 22.10.1981 would not stand to reason.

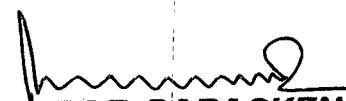
6 I have heard Mr. T.C.Govindaswamy for the applicant and Ms.P.K.Nandini for the respondents. The initial objection of the respondents for the absorption of the applicant in Group 'D' service was that the Applicant was not in possession of the original Casual Labour Card. As there were other sufficient documents available with the respondents 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 the case of

the applicant for absorption ignoring the requirement of producing the original Casual Labour Card but subject to fulfilling other conditions. Now the respondents have raised the new objection regarding the discrepancy in his date of birth. It is seen that the applicant never declared his age at the time of initial engagement as casual labour on 22.10.1981. He had only stated that he was 20 years old. The respondents had assumed his date of birth as 22.10.1961 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 date of birth. 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 for him 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. 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 has produced the more authentic document, namely a certificate indicating his date of birth as 7.12.1967. 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 22.10.1961. 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. However, it is seen that there is substantial difference of more than 6 years between the assumed date of birth of the

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applicant by the respondents and the actual date of birth claimed by him in the Certificate. By accepting his certificate and his date of birth as 7.12.1967, the applicant would be gaining the difference of 6 years in his total service. Therefore, the prayer of the applicant to direct the respondents to absorb him as a Group 'D' employee in the Palghat Division of the Southern Railway cannot be straight away accepted. Moreover, another important aspect of the case also cannot be ignored. If the actual date of birth of the applicant as claimed by him in this OA and according to the Certificate submitted before the Screening Committee is 7.12.1967, he joined the respondents as a Casual Labourer as a minor at an age less than 15 years. He managed to get engagement as Casual Labourer on 22.10.1981 on the basis of his declaration that he was 20 years of old. It was absolutely a misrepresentation. The applicant who has secured the job as a casual Labourer by misrepresentation of his age cannot be considered for a regular engagement even if the certificate of age now produced by him is genuine. This OA, therefore, deserves to be dismissed and it is dismissed accordingly. There is no order as to costs.

Dated this the 25<sup>th</sup> day of July, 2007

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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