

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.109/2007

Wednesday, this the 25th day of July, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Leela, aged 50 years
D/o Chatha,Ex-Casual Labourer,
Southern Railway, Palghat Division,
Residing at Moorkkathupadi, Pallipuram Post,
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 11.7.2007, 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.781. In response to the
respondents' notification dated 12.3.2003, the applicant reported to their
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office for verification of the requisite documents including the original casual labour card. As the original casual labour card and proof of her date of birth were not available with her, she was unable to produce the same before the Screening Committee even though she was granted two more opportunities on 7.10.2003 and 18.2.2005. She was in possession of the certificate of casual service issued to her by the Section Engineer/PW (PW1), Angadipuram and according to her she handed over the same to the respondents on 7.10.2003. The applicant again appeared before the Screening Committee on 18.2.2005. The Screening Committee finally did not recommend her for absorption on the ground that she had not produced the original casual labour service card and the proof of her date of birth and she was informed accordingly by the Annexure A3 letter dated 20.3.2004.

2 Aggrieved by the aforesaid action of the respondents, she filed OA.531/2005 before this Tribunal and this Tribunal quashed the said letter dated 20.3.2004 rejecting her request for absorption on the ground of non-production of original casual labour service card and proof regarding her date of birth 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 available, nothing more was required to be verified or cross verified. To avoid any impersonations nothing more was more authentic and fool proof than the finger print. As regards the date of birth certificate, the respondents were directed to obtain an affidavit from the applicant in terms of Rule 225 of the IREM which reads as under:



"When a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a Municipal birth certificate, if he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the school leaving certificate, a baptismal certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age.

(b) if he could not produce any authority in accordance with (a) above, he should be asked to produce an affidavit in support of the declaration of age."

The respondents were, therefore, directed to consider the case of the applicant for necessary screening subject to her 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 she spent in prosecuting the case.

3 In terms of the aforesaid orders of this Tribunal, a Screening Committee was again constituted and after verifying the documents available with the respondents and those produced by the applicant and also adverting to the rules on the subject, the Screening Committee again did not recommend the applicant for her absorption as informed her vide the impugned A.1 order dated 12.1.2007 without assigning any reasons. However, in the reply to this OA, the respondents have indicated that the reasons for non-absorption of the applicant was that certain discrepancies found in the records relating to her age. According to the respondents, her initial engagement shown in the LTI Register was 29.12.1981 and the age mentioned therein was 30 years and according to the rule relating to

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acceptance of date of birth as laid down in para 225(1),255(3)(a) and Railway Ministries decision below Rule225 of the IREC Vol.I, her date of birth should have been 29.12.1951. Instead, in the affidavit dated 22.8.1990 produced by her, her age as on that date was 32 years and hence her date of birth was 22.8.1958. Since there is variation in the date of birth as per the aforesaid two records, her case for absorption was rejected.

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. The aforesaid rules are as under:

"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.

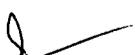
Railway Ministry's decision below Rule 225 of IREC Vol.I:

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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 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 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 29.12.1951 based on her declaration that her age at the time of initial engagement on 29.12.1981 would not stand to reason.

6 I have heard Mr. T.C.Govindaswamy for the applicant and Shri Thomas Mathew Nellimootil for the respondents. One of the initial objections of the respondents was that the applicant did not produce the original casual labour card. The other objection was that the applicant did not produce the necessary certificate showing her date of birth. The contention of the applicant was that she was not in possession of both the aforesaid documents. This Tribunal considered the matter in detail in OA 531/2005 filed by the applicant earlier and in the facts and circumstances of the case, vide order dated 31.8.2006 directed the respondents 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, as there were other sufficient documents to prove her earlier



period of engagement as Casual Labour and to establish her identity. As regards the age limit, the respondents were directed to consider the same, if need be by deducting from the age the time spent by her in prosecuting the aforesaid O.A. On the basis of the aforesaid orders of this Tribunal dated 31.8.2006 in OA 525/05, the respondents convened the Screening Committee meeting again to consider her case. She did not produce any fresh documents. As regards the proof of her age, what she produced was an affidavit dated 22.9.1990 showing her date of birth as 22.8.1958 and her age on that date as 32 years. At the time of initial engagement as casual labour on 21.12.1981, the applicant did not declare her date of birth, but she had stated that her age as on that date was 30 years. The respondents have applied Rule 225(3) (a) of the IREC Vol.I quoted above and assumed her date of birth as 29.12.1951. The said provision of Rule is applicable in those cases where the person entering the service is unable to give his/her date of birth. In view of the discrepancy in the two documents submitted by the applicant, the respondents have rejected her request for absorption. If the affidavit of age submitted by the applicant is accepted, she would be gaining about 6 years in her service. When the applicant herself had submitted that she was 30 years of age at the time of her initial engagement on 21.12.1981, it is not clear as to how she could give the affidavit stating that her date of birth in 1990 is 22.8.1958. In other words she was only 18 years and about 3 months at the time of her initial engagement on 21.12.1981. There is substantial difference in her age as per her initial statement as entered in the LTI Register and the affidavit filed by her. Obviously, the respondents rejected her case for absorption in view of the aforesaid discrepancy. However, the fact remains that the



applicant was not required to declare her age at the time of initial engagement. It is possible that she had indicated her age as 30 years at the time of initial engagement on 21.12.1981 as an inadvertent mistake. In case her actual date of birth is 22.8.1958 as stated in the affidavit furnished by her, she cannot be denied re-engagement/absorption on the ground of the said discrepancy alone. However, according to the two documents, since there is a substantial difference of 6 years in the age of the applicant the doubt raised by the respondents regarding the veracity of the affidavit submitted by her cannot be ignored.

7 In the above facts and circumstances of the case, the respondents are directed to refer the applicant to the competent medical authorities of the Railways to determine her age. In case the age of the applicant as given by her in the Affidavit tallies with her age as determined by the medical authorities, the applicant shall be absorbed 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. Applicant being an illiterate, the difference between the actual age as determined by the medical authorities and the age as given in the Affidavit to the extent of one year shall be ignored. The respondents shall implement this order within three 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. However, in case it is proved that the Affidavit filed by the applicant was false subject to a variation of one year as afore stated, the respondents have every right to reject her candidature.

8 The application is disposed of with the aforesaid directions.
No order as to costs.

Dated this the 25th day of July, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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