

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.111/2007

Wednesday...this the *25th* day of July, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Kamala, aged 44 years.
D/o Kanakaraj, Retrenched Casual Labourer,
Southern Railway, Palghat Division,
Residing at Chattankunnuparambu, 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.

(By Advocate Mr. Sunil Jose)

The application having been heard on 12.6.2007 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 of the Palghat Division of the Southern Railway
and whose name has been registered at Sl.No.772 of the Live Register,
before this Tribunal seeking a direction to the respondents for her re-




engagement/absorption against any of the existing vacancies of Trackman/Gangman (Group D) in terms of the directions of the Hon'ble Supreme Court in Inderpal Yadav's case and consequential orders issued by the Railway Board.

2 In terms of the sanction dated 27.1.2003 issued by the Chief Personnel Officer, Madras for filling the 270 posts of Trackman from the Live Register, a notification was issued on 12.3.2003 calling upon the retrenched casual labourers from Sl.No.636 to 1395 to report to the Divisional Office, Palghat between 17.3.2003 to 19.3.2003 with all documents such as casual labour card, date of birth certificate etc. The applicant's position in the Live Register being 772, she had also reported for verification of her documents. Since the applicant had no Casual Labour Card or Date of Birth certificate, she produced only an affidavit as substitute but the same was not accepted by the respondents. The screening committee, therefore, did not recommend her name for absorption and she was informed accordingly vide letter dated 20.3.2004 (Annexure A2 to this OA).

3 Aggrieved by the aforesaid action of the Screening Committee in not recommending her name for absorption, she approached this Tribunal earlier by filing OA 525/05 and the same was disposed of on 31.8.2006. The operative part of the said order is reproduced below for the sake of convenience.

"5 Arguments have been heard and documents perused. It has not been specifically denied that the applicant was not given any casual labour card and that she had produced the certificate issued by the unit office. It is the admitted fact that the name of the applicant finds place at Serial No.772 of the Live Casual Labour register and that the details contained therein



are the ones furnished by the Unit Office. In addition, the respondents do maintain a Left Hand Thumb Register, which contains the left hand thumb impression of the casual labourers are concerned. Production of casual labour card is not a statutory requirement.

6 The apprehension of the respondents is that in the absence of original casual labour card impersonation would be very much possible and the anxiety of the respondents is that such impersonation should not be allowed. As the casual labour card contains the thumb impression the same could be compared with that of the holder of the card, if need be. While it is appreciated that care should be taken to ensure that there is no impersonation, at the same time, an aspect which cannot be lost sight of is that the casual labour card is required only for comparison of the details as furnished in the Register. Assuming that the details contained in the register vary from the ones given in the casual labour card, the same could well be by way of manipulation by the holder of the casual labour card and in that event, it is only the details as contained in the register that would be considered and acted upon. Again, in the instant case, the applicant has averred that she was not given any such casual labour card at all and instead only a certificate was given to her by the Unit where she served. Though invariably casual labour card are issued to casual labourers, which alone would be the proof of they being engaged as casual labourers and in the absence of production of such card they would not be permitted to work as such, possibility is not ruled out that such card for any reason whatsoever (for eg as per the applicant's counsel, shortage of printed card) might not have been issued and in its place certificate could have been issued. For, issue of such certificate when casual labour card is issued is also not a normal practice. In any event, as the details of engagement of the applicant as casual labourer are available in the Register and as the same are as per the date furnished by the Unit office, the absence of casual labour card cannot be the reason to totally reject the claim of the applicant. As regards fear of impersonation, the respondents already having the Left Hand Thumb Impression, the same can be easily verified,.

7 As regards the date of birth, Since provision exists production of affidavit in this regard, the same can be utilized. It can be made clear to the applicant that in the event of the contents of the affidavit being found false, consequences of having given false

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affidavit would follow.

8 In view of the above, the OA is allowed. Impugned order dated 20.03.2004 is quashed and set aside. It is 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.

9 The respondents are, therefore, directed to call the applicant for screening and take further action. This drill has to be performed within a period of three months from the date of communication of this order."

4 According to the Annexure.A1 letter dated 12.1.2007, in compliance of the directions of this Tribunal dated 31.8.2004 in OA 525/05 a screening committee was 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 her name for absorption. No reason whatsoever was given this time by the respondents for the screening committee not to recommend her name for absorption.

5 In the reply affidavit filed by the respondents they have submitted that in terms of the Apex Court's direction in Inderpal Yadav's case, a Live Register of retrenched Casual Labourers was prepared and published for the purpose of their re-engagement. List of casual labourers who were retrenched after 1.1.81 was prepared based on the details furnished by the unit offices and list of casual labourers retrenched prior to 1.1.81 was prepared on the basis of the application and supporting documents furnished by the applicants on or before 31.8.87. Both these lists were merged on the basis of the directions of this Tribunal in OA

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1706/94. The respondents have submitted that the name of the applicant is available in the Live Register at Sl.No.772. They have also submitted that in terms of the direction of this Tribunal in OA 525/05 dated 31.8.2006, the applicant, vide Annexure.A5 letter dated 14.1.2004, was directed to report in the office of the respondents on 24.11.2006 with necessary documents. From the affidavit produced by the applicant, the screening committee found that the date of birth recorded therein was 22.8.63 whereas at the time of initial engagement on 21.12.1981 as recorded in the LTI Register the age given by her was 24 years and her date of birth should have been 21.12.1957. Thus there was variation in the date of birth as per the two records. 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."



6 Explaining the aforesaid rule position, the respondents have further submitted that in terms of Rule 225(3)(a), when a person enters service, 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 the declaration expressed or implied for any public purpose. As per Railway Board decision contained below Rule 225 of IREC Vol.I in the case of Group D employees, while entering regular Group D service is not different from any declaration express or implied, given earlier at the time of employment as Casual Labour or as substitute. As per the LTI Register the date of initial engagement of the applicant is 21.12.1981 and her age was 24 years. Thus in terms of Rule 225(3)(a) the date of birth of the applicant is to be derived as 21.12.1957 but as per the affidavit produced at the time of screening for consideration to regular Group D post, her date of birth shown was 22.8.63. The respondents have also submitted that in terms of para 179 XIII(C) of Indian Railway Establishment Manual Vol.I, casual labourers should be considered for regular employment, provided they are eligible for the same. In the instant case, due to the non-production of the casual labour card and other documents, the screening committee had not recommended her name for regular absorption and hence she is not eligible for regular appointment. The respondents have contended that the production of casual labour card is necessary for identifying the casual labour concerned as the casual labour card contains details such as date of initial engagement, age at the time of engage, LTI etc and it is to be confirmed that the age recorded in the casual labour card tally with the documents now produced to prove her date of birth as mandated in Rule




225 of the Indian Railway Establishment Code Vol.I.

7 I have heard Mr.T.C.Govindaswamy for the applicant and Mr. Sunil Jose 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 and in the facts and circumstances of the case, 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. The new objection is regarding her date of birth. On the strength of this Tribunal's order dated 31.8.2006 in OA 525/05, the applicant filed an affidavit stating that her date of birth is 22.8.1963. 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 was 24 years. The respondents have applied Rule 225(3) (a) of the IREC Vol.I quoted above and assumed her date of birth as 21.12.1957. 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 24 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 22.8.1963. 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 24 years at the time of initial engagement on 21.12.1981 as an inadvertent mistake. In case her actual date of birth is 22.8.1963 as stated in the affidavit furnished by her, she cannot be denied re-engagement/absorption on the ground of discrepancy alone. However, according to the two documents, since there is a substantial difference of 6 years in the age of the applicant and she would be gaining so many years of service, it is necessary to establish the actual age. Therefore, 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