

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.121/2007

Wednesday this the 25th day of July, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Shanta, aged 45 years,
D/o Kunhagan, retrenched Casual Labourer,
Southern Railway, Palghat Division,
residing at Kunnummel House, Pallipuram Post,
Palghat District. ...Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 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 Ms.Deepa for Advocate Mr. P.Haridas)

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.761. During the month of March/April, 2003 a large number of retrenched casual labourers including the applicant, by a general notification published in the notice



board, were directed to report before the office of the 3rd respondent for verification of their left hand thumb impression and other service records. The applicant had also reported and affixed her left hand thumb impression in a register maintained for that purpose. Thereafter, vide Annexure.A2 letter dated 22.9.03 the applicant was directed to report in the office of the third respondent on 7.10.2003 with the requisite documents and to appear before the Screening Committee constituted for the purpose of screening and absorption of ex-casual labourers. On verification of the documents submitted by her, the respondents found that she had not produced the original casual labour service card and any proof regarding date of birth in original. According to the applicant, she had produced the original of the casual labour service card etc. issued by the Permanent Way Inspector/Angadipuram and an affidavit sworn before the Judicial First Class Magistrate in support of her date of birth as she is an illiterate. Since she was not screened and absorbed by the respondents, the applicant again made a representation and in response thereof, the Respondents informed her vide Annexure.A3 letter dated 20.3.04 that the Screening Committee has not recommended her name for absorption for the reason that she did not produce (i) the original casual labour card and (ii) identity cards from two serving employees. The applicant again made a representation on 4.2.05 and she was again directed to appear before the Screening Committee on 18.2.2005 but the respondents again rejected her case for not producing (i) proof of identity from two serving employees (ii) date of birth certificate (iii) proof for educational qualifications and (iv) original casual labour service card.

2 Aggrieved by the aforesaid action of the respondents, she filed OA.526/2005 before this Tribunal. Vide order dated 31.8.2006 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 allowed the O.A declaring that the applicant was 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 again and to take further action.

3 In terms of the aforesaid orders of this Tribunal, a Screening Committee was again constituted 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 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 submitted that the reasons for non-absorption of the applicant was due to certain discrepancies in records relating to her age. On verification of the Affidavit produced by her, it was seen that her date of birth was recorded as 22.8.1961. At the time of her initial engagement as a casual labour on 21.12.1981, she had indicated her age as 25 years and the same was recorded in the LTI Register. Therefore, according to the respondents, her date of birth should have been 21.12.1956 instead of 22.8.1961 as recorded in the Affidavit 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

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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 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 and the respondents' presumption that her date of birth should be 21.12.1956 based on her declaration that her age was 25 years at the time of initial engagement on 21.12.1981 would not stand to reason.

6 I have heard Mr. T.C.Govindaswamy for the applicant and Ms.Deepa for Mr.P.Haridas for the respondents. One of the initial objections of the respondents for the absorption of the applicant in Group 'D' service was that she was not in possession of the original Casual Labour Card. As there were other sufficient documents available with the respondents to prove her earlier period of engagement as Casual Labour and to establish her identity, this Tribunal vide order dated 31.8.2006 in OA 526/2005 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. The objection raised now by the respondents is the discrepancy in her date of birth. It is seen that the applicant never declared her age at the time of initial engagement as casual labour on 21.12.1981. She had only stated that she was 25 years old. The respondents had assumed her date of birth as 21.12.1956 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. Neither she was asked for nor she was 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 at that time. 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 when her case for absorption in the Railways was being considered. As permitted under the rules, she produced an Affidavit sworn before the Judicial Magistrate of First Class indicating her date of birth as 22.8.1961. 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 4 ½ years between the assumed date of birth of the applicant by the respondents and the actual date of birth claimed by her in the Affidavit. It is not the case of the applicant that she has not declared her age as 25 years at the time of her initial engagement as casual labourer on 21.12.1981. By accepting her Affidavit and her date of birth as 22.8.1961, the applicant would be unduly gaining the difference of 4 1/2 years in her total service. Therefore, the prayer of the applicant to direct the respondents to absorb her as a Group 'D' employee cannot be straight away accepted. It is possible that she had indicated her age as 25 years at the time of initial engagement on 21.12.1981 as an inadvertent mistake. In case her actual date of birth is 22.8.1961 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 more than 4 ½ 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.



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