

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.134/2007

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

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.N.Manickan, aged 42 years  
S/o Narayanasamy, retrenched Casual Labourer,  
Southern Railway, Palghat Division,  
residing at Kizhakke Palayam, Varkad,  
Muttikulangara, 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 heard on 19.7.2007, 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 of Southern Railway,Palghat Division and  
whose name has been recorded at Sl.No.999 in the Live Casual Labour  
Register maintained by the respondents. In response to the respondents'  
notification issued during March/April, 2003 , the applicant reported to the  
office of the 3<sup>rd</sup> respondent for verification of the Left Hand Thumb

(Signature)

Impression and other records. Thereafter, vide Annexure. A4 letter dated 22.9.2003, the 3<sup>rd</sup> respondent directed the applicant to report to his office on 8.10.2003 with documents such as original Casual Labour Service Card, Date of Birth Certificate etc. According to the applicant, the original Casual Labour Service Card was not available with him as the same was handed over to respondents in 1999 itself, as per their instructions. The respondents, therefore, did not include his name in the Screening List. The applicant made a representation against the non-inclusion of his name in the Screening List. Thereafter, vide Annexure. A5 letter dated 20.3.2004, the respondents informed him that since he has not produced the original Casual Labour Service Card, he has not fulfilled the conditions for absorption of ex-Casual Labourers from the Live Register for the post of Trackman. The Screening Committee has, therefore, not recommended his name. However, vide the Annexure. A6 letter dated 4.2.2005, respondents again directed the applicant to appear before the Screening Committee with the document such as Date of Birth Certificate, Original Casual Labour Service Card etc. The applicant again appeared before the Screening Committee on 18.2.2005 and in the absence of the original Casual Labour Service Card, he produced copy of the Annexure. A3 Muster Extract for 101 days covering the period from 10.1.84 to 2.7.84. However, the Screening Committee did not recommend his name for absorption on the ground that he had not produced the original Casual Labour Card.

2 Aggrieved by the aforesaid action of the respondents, he filed OA.476/2005 before this Tribunal and 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 after observing that Casual Labour Service Card is required only for comparison of the details



as furnished in the Register and for identification. It was, therefore, declared that the applicant was entitled to be screened subject to his fulfilling the requirements on the basis of the details contained in the Live Casual Labour Register and in the event of his clearing the screening, he should be considered for absorption in accordance with the relevant rules and regulations on the subject.

3 In terms of the aforesaid orders of this Tribunal, a Screening Committee was constituted again on 24.11.2006 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 his absorption as informed him 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 the reasons for non-absorption of the applicant as certain discrepancies in records relating to his age. According to the respondents, at the time of his initial engagement on 2.7.1981, he had indicated his age as 19 years. In the LTI Register also the same age was mentioned. Accordingly, his date of birth should have been 2.7.1962. On the other hand the applicant produced the School Certificate showing his date of birth as 5.5.1965. Since there is discrepancy in the date of birth as per the aforesaid two records, his case for absorption was rejected. 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

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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. He had never declared his date of birth at the time of his initial engagement as he was not required to do so. He has also submitted that the

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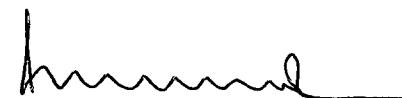
respondents' presumption that his date of birth should be 2.7.1962 based on his declaration that his age at the time of initial engagement on 2.7.1981 would not stand to reason.

6 I have heard Mr. T.C.Govindaswamy for the applicant and Shri Thomas Mathew Nellimootil for the respondents. Their initial objection was that the Applicant was not in possession of the original Casual Labour Card in the printed format. When there were sufficient documents to prove his earlier period of engagement as Casual Labour and to establish his identity, this Tribunal has 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. On further verification of the other documents, 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 2.7.1981. He had only stated that he was 19 years. The respondents had assumed his date of birth as 2.7.1962 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. There is no such case here. He was not 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. 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 22.9.2003. According to the School Admission Certificate produced by him, his date of birth is 5.5.1965. There is a



substantial difference of nearly three years between the assumed date of birth of the applicant by the respondents and his actual date of birth recorded in his School Admission Certificate. By accepting his Certificate and his date of birth as 5.5.1965, the applicant would be gaining the difference of about 3 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 5.5.1965, he joined the respondents as a Casual Labourer as a minor at an age of about 16 years. He managed to get engagement as Casual Labourer on 2.7.1981 on the basis of his declaration that he was 19 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

s.