

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.203/2005

TUESDAY THIS THE 2ND DAY OF AUGUST, 2005

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**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER**

V.A.Krishnan, aged 40 years, S/o Andy,
(Ex.Casual Labourer), Southern Railway,
Palghat Division,
residing at Vellam Kunnu House,
Post.Mankara,
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, Palakkad Division,
Palakkad. ...Respondents

(By Advocate Ms. P.K.Nandini)


The application having been heard on 8.7.2005 the Tribunal on 2.8.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retrenched casual labour of Southern Railway, Palakkad Division and is aggrieved by the impugned order

dated 10.1.05 rejecting his case for screening and absorption against the post of Gangman/Trackman in Group 'D' service. The facts as submitted by the applicant are that he was initially engaged as a casual labour on 28.7.83 and was retrenched on 17.8.84. He belongs to Scheduled Caste Community and he has a total of 388 days of casual service. His name is in the list of casual labourers and on 19.3.03 when he visited the office of the 2nd respondent he found that verification of LTI and service cards of the persons whose names included in the list of Casual Labourers was going on and he requested the officers to grant him some time for production of necessary documents for verification. He furnished the documents in the third week of October, 2003 which was not accepted in the office of the 2nd respondent and therefore he submitted a representation to the second respondent along with an affidavit in proof of age (Annexure.A.4). He approached the Tribunal in OA 251/04 and it was directed to consider the applicant for screening and absorption. The respondents directed him to attend the office on 5.1.05 along with documents for proof of date of birth issued by school authorities or by civil authorities, original community certificate, original casual labour service card and proof of identity from two serving employees. Accordingly all the documents including the affidavit declaring his date of birth as 14.10.64 were submitted. Now the respondents have issued the impugned order (A6) stating that they are not in a position to accept his date of birth as 14.10.64 as there is a



discrepancy between the date given at the time of initial engagement and now. Respondents are relying on Rule 225 of the Indian Railway Establishment Code which was already considered by this Tribunal in OA 251/04 and thereafter only respondents were directed to consider him. Since the applicant belongs to S.C. community he is well within the age limit which fact had already been conceded by the respondents' counsel in the earlier Original Application. The applicant therefore, prays for the following reliefs:

(a) Call for the records leading to the issue of Annexure.A6 and quash the same.

(b) Direct the respondents to accept the affidavit submitted by the applicant in proof of his age and consider him for re-engagement and absorption as a Gangman/Trackman in preference to and along with his juniors and direct further to grant the consequential benefits with effect from the date of such absorption of his next junior in the seniority list of retrenched casual labourers of Southern Railway, Palghat Division.

(c) Award costs of and incidental to this application.

2. The respondents contend in their reply that out of four documents the applicant was required to produce, against item No.1, the proof of date of birth he has produced only an affidavit declaring his date of birth as 14.10.64 instead of a certificate from the school authorities/civil authorities. However his case was considered with reference to the documents submitted and on verification of the documents it was seen that in the casual labour card, the age is shown as 21 years as on 28.7.83 ie., the date of birth would be 28.7.62. Therefore, there is a contradiction regarding age as far as

the documents produced by him. Rule 225(2) of Indian Railway Establishment Code provides that a person who is not able to declare his age should not be appointed to Railway service. The applicant has failed to declare his age and date of birth correctly. Hence the order passed by the respondents is well within the rules. The applicant has relied on the Railway Ministry's decision under Rule 225 which provides for production of an affidavit in support of declaration of date of birth. Paragraph © of the said decision reads as follows:

"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 a casual labour or as a substitute."

Since the Date of birth in the affidavit was different from that declared earlier the above paragraph is attracted and therefore his affidavit cannot be accepted. The applicant's claim cannot be considered for the above reasons and therefore, the OA is devoid of any merit.

3. The counsel on both sides were heard. The only ground which has been put forward by the respondents for non-consideration of the case of the applicant according to our directions in OA 251/04 is regarding the discrepancy in the date of birth mentioned in the service card and that in the affidavit now submitted by the applicant. Both sides have relied on Rule 225 of the Indian Railway Establishment Code. According to the respondents, Rule 225 Sub Clause (1) and item © of the Railway Ministry's decision thereunder



have to be read together for determining the case of Group D employees. The relevant provisions of Rule 225 are extracted below for easy reference.

"225. Date of birth:- (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 illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(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 e.g. 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.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month respectively, shall be treated as the date of birth.

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Railway Ministry's decision--: (a) 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.

© 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 a casual labourer or as a substitute."

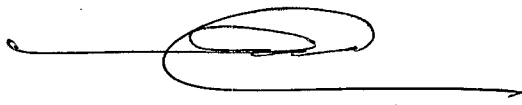
The applicant has relied on Sub Paras (a) and (b) of the Railway Ministry's decision that "when a candidate is not able to produce the evidence to the satisfaction of the appointing authority, he can produce an affidavit in support of the declaration of age." Since the applicant was unable to produce any school certificate or birth certificate he has produced an affidavit in support of his declaration of age stating that his date of birth is 14.10.64. According to the respondents since he had declared his age as 21 years at the time of his initial engagement it is to be implied that his date of birth is 28.7.62. For making this assumption they rely on Sub Rule 3(a) of Rule 225. The crux of the matter is therefore, whether the applicant has declared a different date of birth at the time of initial engagement as a casual labour and in the affidavit produced by him. On verification of the casual labour card (A2) we find that column 3 which relates to the Date of birth is left blank. In column No.4 relating to age on initial engagement it is stated as 21 years and the date of the card is 22.8.84. According to the applicant he entered service in 1983. Therefore, the card seems to have been issued at the time of his retrenchment and not at the time of initial engagement. Rule 225 (1) provides that in the case of illiterate staff the date of birth shall be recorded by a senior railway officer and

witnessed by another railway servant. The entries in the applicant's service card relating to age and date of birth are not recorded by any senior officer or attested by another officer as provided in the above rule. Therefore, we can reasonably conclude that the applicant had not made any declaration of his date of birth being an illiterate employee on 22.8.84, but only his approximate age at the time of employment was recorded as 21 years. Therefore, we are not in agreement with the contention of the respondents that paragraph (c) of the Railway Ministry's decision referred to under Rule 225 of Indian Railway Establishment Code would be applicable to the applicant in this case. Moreover, it has been admitted by the respondents themselves that the applicant is well within the age limit prescribed, whether his date of birth is taken as 28.7.62 or 16.10.64. Considering the above factors and that the applicant is an illiterate S.C Candidate, we hold that the action of the respondents in rejecting his case merely on the technical ground that there is a discrepancy in the age as at the time of engagement and at the time of declaration is not fair and proper, more so, when the Railway Administration themselves had not followed the procedure prescribed in the same rules on which they rely now while issuing the casual labour service card. Therefore we are satisfied that the applicant has made out a case for himself and that the relief asked for is to be granted.

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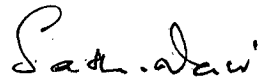
4. Accordingly the Original Application is allowed. The respondents are directed to accept the affidavit submitted by the applicant in proof of his age and consider him for screening and absorption as a Trackman/Gangman in preference to his juniors and allow him all consequential benefits. No costs.

Dated this the 2nd day of August, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER

S.



SATHI NAIR
VICE CHAIRMAN