

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.209/08

Monday this the 30th day of March 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

K.Balan,
S/o.Kandachami,
Ex-Casual Labourer,
Southern Railway, Palghat Division.
Residing at Menakathu House,
Chittoor Taluk, Palghat.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.

2. The Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 30th March 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a retrenched casual labourer of Southern Railway, Palghat Division. He worked under the respondents for a period from 2.1.1984 to 2.7.1984. According to the respondents, his name has been registered at SI.No.1085 in the Live Register for absorption in the regular service of the Railways. In the month of March, 2003 a large number of retrenched casual labourers including the applicant were directed to report before the 2nd respondent for verification of their left thumb impression and



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other records. The applicant has accordingly reported before the Screening Committee constituted for the purpose of re-engagement of casual labourers on 9.10.2003. When the respondents have not taken any further action to re-engage him as a regular Group 'D' employee, he made representation dated 12.3.2004 and in reply to the same the respondents vide letter dated 22.3.2004 informed him that he had not fulfilled the condition of producing the original school certificate or date of birth certificate issued by civil authority to prove his date of birth. Thereafter, vide Annexure A-4 letter dated 27.12.2005 he had submitted a copy of the birth certificate obtained from his Panchayat. As there was no reply to the same, he made Annexure A-5 representation dated 6.6.2007. As no favourable decision was taken he has filed this O.A before this Tribunal seeking the following reliefs :-

1. Declare that non feasance on the part of the respondents to consider and absorb the applicant as a Group 'D' employee in preference to his juniors in the list of retrenched casual labourers of Palghat Division of Southern Railway, is arbitrary, discriminatory and unconstitutional.

2. Direct the respondents to consider the applicant for regular absorption as Trackman/Gangman and regularise him with effect from the date from which the applicant's junior have been engaged/absorbed, with all consequential benefits arising therefrom.

2. The applicant has also filed M.A.532/08 for condonation of delay in filing the O.A. According to him, there was no willful delay or negligence on his part and he had been making representation to the respondents and whenever he visited the office of the respondents he has been given assurance that his case will be considered favourably and he will be absorbed in the regular establishment of the Railways.



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3. Respondents in their reply statement admitted that the applicant was a retrenched casual labourer and his name was entered in the Live Register as Sl.No.1085. However, they have also submitted that when he had reported for verification of the certificates etc., he did not produce any authentic documents viz. School certificate/date of birth certificate issued by civil authorities to prove his date of birth. He was, therefore, directed to produce the same before the Screening Committee on 9.10.2003. As the applicant did not produce the requisite certificates the Screening Committee did not recommend his name and, therefore, he was not absorbed as Trackman and the said fact was communicated to him by Annexure A-3 letter dated 22.3.2004. They have further submitted that in proof of date of birth, the applicant has produced a certificate on 19.3.2003 issued by the Civil Surgeon, District Hospital, Palghat showing his age as 35 years as on 19.3.2003. Thus his date of birth is to be treated as 19.3.1968. On the other hand, by Annexure R-2 affidavit submitted by him on 16.10.2003, his date of birth was shown as 16.2.1966. However, at the time of initial engagement as casual labourer on 2.1.1984 he had declared his age as 19 years and it was recorded in Annexure R-3 casual labour card and going by the said document his date of birth would be 2.1.1965. According to the respondents, from the different documents produced by him, his date of birth has been shown on different dates.

4. The applicant in his rejoinder has produced two more documents. Annexure A-6 dated 7.12.2005 is an order from the Revenue Divisional Officer, Palakkad and Sub Divisional Magistrate, Palakkad showing his date of birth as 22.2.1965. He has also produced Annexure A-7 dated



22.12.2005 issued by the Secretary and Registrar of Births and Deaths, Vadavannur Grama Panchayat wherein his date of birth has been shown as 22.2.1965.

5. I have heard the counsel for the parties. The only reason for not absorbing the applicant as a Group 'D' employee is that he has not produced either original school certificate or date of birth certificate issued by civil authorities to prove his date of birth. However, the fact of the matter is that the applicant is an illiterate person and at the time of his engagement as a casual labourer on 2.1.1984 he had stated before the respondents that he was 19 years old and in accordance with the provisions contained in para 225(1), 225(3)(a) his date of birth was determined as 1.1.1965. When the applicant is an illiterate person and he had not attended any school, there is no question of producing any original school certificate showing his date of birth. Now the question is producing of birth certificate issued by the civil authorities. In this case it is seen that the applicant had no such birth certificates issued to him by any civil authorities. In the anxiety of the applicant to get himself absorbed in the regular establishment of the Railways he has produced a number of documents from time to time. Vide Annexure R-1 certificate dated 19.3.2003 issued by the Civil Surgeon, District Hospital, Palakkad his age was assessed as 35 years as on 19.3.2003 and accordingly his date of birth should be treated as 19.3.1968 in terms of the aforesaid provisions of the Indian Railway Establishment Code. Thereafter, he has produced a certificate from the President, Vadavannur Grama Panchayat wherein it was stated that he was 37 years old as on 14.10.2003. Accordingly, his



date of birth should be treated as 1.10.1966. Thereafter, the applicant has again produced an order from the Revenue Divisional Officer, Palakkad and Sub Divisional Magistrate, Palakkad showing his date of birth as 22.2.1965. Another birth certificate he has produced is from the Secretary and Registrar of Births And Deaths, Vadavannur Grama Panchayat showing his date of birth as 22.2.1965. When a casual labourer who is declared to be an illiterate person it is quite natural that he can give only his approximate age. From the various documents produced by him I do not find there is much variance in the dates. The insistence of the respondents to produce the birth certificate from the civil authorities had made him run from one authority to another. Finally, he has produced the Annexure A-6 birth certificate dated 7.12.2005 from the Revenue Divisional Officer, Palakkad and Sub Divisional Magistrate, Palakkad showing his date of birth as 22.2.1965. Secretary and Registrar of Births And Deaths, Vadavannur Grama Panchayat has also issued an order dated 22.12.2005, again showing his date of birth as 22.2.1965. The said certificate was supported by Annexure A-7 order. Accordingly, his date of birth is to be treated as 22.2.1965 for all purpose. The respondents have received them. It is not the case of the respondents that the applicant has produced any bogus certificate. In fact all the certificates are genuine and the authorities concerned have issued them on the basis of their own assessment. In my considered view, there shall not be any further dispute about his date of birth and the respondents shall treat the Annexure A-6 and Annexure A-7 certificates as authentic and treat the applicant's date of birth as 22.2.1965 for all his service benefits. Since the applicant has already been screened by the Selection Committee and his case had been rejected only for the



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reason that he did not produce the date of birth certificate, he shall be engaged in any suitable Group 'D' post without any further delay as prayed by him.

6. In the above facts and circumstances of the case, the applicant shall be notionally regularised in service with effect from the date from which his juniors have been engaged and absorbed. Necessary orders in this regard shall be issued to the applicant within a period of three months from the date of receipt of a copy of this order. Since the applicant has been waiting for an order of absorption from 22.9.2003, the date on which he has been asked to appear before the Screening Committee vide Annexure A-2, there shall be no further delay in his appointment and necessary orders in this regard shall be issued at least within three months from the date of receipt of a copy of this order. In case of any further delay in issuing the order of absorption, the applicant will be entitled for full pay and allowances from the expiry of the said three months. There shall be no order as to costs.

(Dated this the 30th day of March 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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