

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 352 OF 2009

Thursday, this the 10<sup>th</sup> day of June, 2010.

CORAM:

HON'BLE Mr. GEORGE PARACKEN JUDICIAL MEMBER  
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. P.A. Kunjukunjamma,  
D/o. (late) Anthrayose,  
Casual Labour / Substitute (Track Women)  
Southern Railway, Office of the Section Engineer/  
Permanent Way / Nagercoil Junction ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India Rep : by the General Manager.,  
Southern Railway, Headquarters Office,  
Park Town (P.O),  
Chennai - 3.
2. The Divisional Railway Manager,  
Southern Railway, Trivandrum Division,  
Trivandrum - 14.
3. The Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum - 14.
4. The Assistant Divisional Engineer,  
Southern Railway / Nagercoil Junction,  
Nagercoil ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 10.06.2010, the Tribunal on the same day delivered the following:

ORDER


HON'BLE Mr. GEORGE PARACKEN JUDICIAL MEMBER

According to the applicant, she was initially engaged as a casual labourer during 1975 under the Permanent Way Inspector, Kottayam and later, retrenched during 1976. She was again re-engaged on 02.06.1980 and continued upto 20.09.1981. She was further re-engaged as Water Carrier from 01.06.1990 and retrenched on 30.06.1990. Aggrieved by the non-inclusion of her name for further engagement and absorption, she approached this Tribunal along with similarly

placed casual labourers by filing joint O.A. No. 930/91 and the same was disposed of directing the applicants to submit a detailed representation for the consideration of the respondents. Thereafter, she was re-engaged w.e.f. 10.03.1993 vide Annex. A2 letter No. 42/93/WP dated nil and later, vide Annexure A-3 letter dated 07.07.1993, the Divisional Personnel Officer, Divisional Office, Trivandrum intimated that her services will be regularised by empanelment of Engineering Casual Labourers for the period ending 30.06.1993 provided she is senior enough to be regularized to the extent of vacancies assessed for the said period. However, her service, along with those two others were terminated during January 1995 without assigning any reason. They challenged their termination in different Original Applications. Vide Annexure A-4 common order dated 08.02.1995, O.A. 148/95 filed by the applicant was allowed with the finding that the termination was illegal as there was no show cause notice issued to her. However, after re-engagement, as they were again terminated from service, they approached this Tribunal once again by filing separate O.As. The applicant challenged her termination order dated 22.04.1995 vide O.A. 645/95 which was disposed of vide common order dated 07.03.1996 with a direction to the applicant to make a suitable representation to the Chief Personnel Officer who in turn to pass a speaking order on it. The Chief Personnel Officer was also asked to consider whether it was necessary to terminate their services or it was sufficient to correct their dates of birth and cause their superannuation accordingly. The operative part of the said order was as under:

"3. Applicants may make suitable representations/Appeals before respondent Chief Personnel Officer and the said Chief Personnel Officer will pass speaking orders on the representations, as early as he finds it convenient. He will specifically advert to the sufficiency or otherwise of the opportunity extended to applicants to show cause against the proposed action. Till a decision is taken by the Chief Personnel officer, applicants will be allowed to remain service. The Chief Personnel Officer will also consider whether it is necessary to terminate the services of these casual employees or whether it will be sufficient to correct their dates of birth and cause their superannuation in terms of that. We are not expressing any opinion on the merits but we think that the Chief Personnel officer should consider these aspects.

4. With the aforesaid directions, we dispose of the Original Applications. Parties will suffer their costs."



2. Thereafter the applicant made a representation dated 29.3.1996 and the respondents disposed of it vide Annexure A-7 letter dated 30.8.1996. According to the respondents, the applicant has secured her re-engagement in the Railways on the basis of her wrong declaration of her age as 38 as on 22.01.1993 in her sworn affidavit. She has never produced any School Certificate in this regard. The Vigilance Department of the respondent-Railways investigated the matter and their report was that the applicant has secured the engagement by stating a wrong date as her date of birth. The Chief Personnel Officer, Southern Railway, has therefore, recommended to the disciplinary authority to take appropriate action against her or to condone the over age and retain her in service vide Annexure A-7 order dated 30.08.1996. The operative part of the said letter reads as under :


" The case of the applicant alongwith a few others was taken up by the Vigilance Department for investigation. It was reported by the Vigilance Department that the applicant appeared to have secured re-engagement in Railways by declaring wrong age in the sworn affidavit submitted at the time of re-engagement. It therefore, called for further action by the respondent that is DPC/IVC.

The applicant had declared on 22.01.1993 in the sworn affidavit for re-engagement that her age was 38 on that date. The applicant however, did not produce any School Certificate. But the inquiry conducted by the Vigilance in her native place revealed that she had two daughters named 1. Smt. P.J. Mariamma and 2. Smt. P.J. Greasy Kutty and that they have studied in A.V. School Kurichy. From the school records it was crystal clear that the age of her two daughters were as under:-

1. P.J. Mariamma : 02.04.1960
2. P.J. Greasy Kutty : 20.05.1963

Accordingly, they are aged 33 and 29 years on 22.01.1993 respectively, on which date the applicant had declared claiming her age to be 38 years. If it were true, then the date of birth of the applicant would be 22.01.1955 and it would possibly mean that she gave birth to her elder daughter Smt. P.J. Mariamma at the age of 5 years, on 1960. When her first child was born, she could be almost 16 years old and on that basis she will be about 31 years old during 1975, when she was initially engaged as a Casual labourer. Thus she was overaged for Casual Labour in 1975.

Apparently, the applicant has deliberately sworn an affidavit declaring her age to be 38 on 22.01.1993 so as to appear that she was engaged within the age limit, when she claims to have been engaged as a Casual Labourer in 1975. This action of the petitioner appears to be a wilful suppression of the fact which has been unearthed on investigation made by Vigilance Department by way of finding the age



of her two daughters, which do not corroborate when the age declared by herself, in an affidavit on 22.01.1993.

The Hon'ble Tribunal in their letter dated 07.03.1996 observed as under:- "The Chief Personnel Officer will also consider whether it is necessary to terminate the service of these Casual employees or whether it will be sufficient to correct their date of birth and cause their superannuation in terms of that".

In terms of the provisions of the rule 245 (RI) (IREC Vol. I), the date of birth recorded in service register can be altered in certain circumstances. But in the instant case, the candidate has not sought for alteration of the date of birth. In terms of the provisions contained in Para 225 (4) (iii) of IREC Vol. I where a satisfactory explanation (which should not be entertained on completion of the probation period of three years service, whichever is earlier) of the circumstances, in which the wrong date came to be entered is furnished by the Railway servant concerned together with the statement of any previous attempts made to have the record amended. On the other hand, the wrong date of birth declared by the candidate which the ulterior motive suppressing the fact of being over aged has been unearthed only by the investigation made by Vigilance Department and not by herself. While the over age of a serving casual labourer can be condoned by the authority vested with the power, the issue involved is a wilful suppression of fact of the candidate and it attracts disciplinary action. It is, therefore, left to the disciplinary authority to take necessary action on the circumstances and on the result of the investigation made by the Vigilance Department alleging that she had declared the age on 22.01.1993 so as to maintain her age to be within the limit, while she was engaged as a casual labourer in 1975, not corroborating with the ages of her daughters, and take appropriate disciplinary action, as deemed fit.

In case the disciplinary authority considers her to be retained in service, the condonation of the over age may be referred to, for communicating the approval of the competent authority. In the circumstances the DPC/PVC's order No. V/P.407//CON dated 22.04.1995 is set aside. In this connection, the Ministry of Personnel (PG & Pension) Department of Personnel and Training Office Memorandum No. 11012/7/91-Estt. (A) of 19.05.1993 enclosed to Board's letter No. E(D&A)92/G5-4-3 dated 20.07.1993 circulated vide CPC's letter No. P(A) 227/P/Vol.XX dated 31.01.1994 may be referred to.

Incidentally the petitioner is still continuing in service by way of Interim Order granted to her".

3. Thereafter, the respondents issued the charge sheet vide Annex. A8 Memorandum dated 29.08.1997 proposing to hold an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (RS (DA) Rules for short). The charge drawn against her was as under:-



"Smt. P.A. Kunjukunjamma, while working as Casual Labour in SE/P.Way/NCJ section committed serious misconduct in that while she was re-engaged as EIR on 10.03.93 under SE/P.Way/NCJ section cheated the Railway Administration by way of giving / declaring wrong age in the sworn affidavit i.e. Declared age as 38 years as on 22.01.1993. The applicant did not produce any School Certificate.

It was ascertained from the enquiries made in the Village that her two daughters Smt. P.J. Mariamma and Smt. P.J. Greasykutty who are now married had earlier studied in A.V. School, Kurichy, based on the information from the Villagers a thorough search was made in the School for the old records and the particulars of the two daughters of Smt. P.A. Kunjukunjamma were traced out. As per the Admission Register, the dates of birth of her daughters are 02.04.1960 and 20.05.1963 respectively.

If the age declared by Smt. Kunjukunjamma is to be taken as on 22.01.1993 her date of birth should be 22.01.1955. But the date of birth of her elder daughter Smt. P.J. Mariamma is 02.04.1960 as per the School Records.

Accordingly, they are aged 33 and 29 years on 22.01.1993 respectively on which date Smt. P.A. Kunjukunjamma had declared claiming her age to be 38 years. If it was true, then the date of birth of Smt. Kunjukunjamma would be 22.01.1955 and it would be possibly mean that she gave birth to her elder daughter Smt. P.J. Mariamma at the age of 5 years on 1960. When her first child was born she could be almost 16 years old and on that basis she will be about 31 years old during 1975 when she was initially engaged as Casual Labour. Thus she was overaged for casual labour engagement in 1975."

4. However, the respondents did not proceed in the matter and the applicant was continued to be treated as daily rated casual labourer. The applicant has, therefore, filed this O.A to call for the records leading Annexure A-8 impugned memorandum dated 29.08.1997 and quash all further proceedings relating to the same. The applicant sought a further direction to the respondents to grant her the benefit of temporary status as also the benefit of regular absorption in accordance with law on par with her juniors with consequential benefits including arrears thereof, as if Annexure A-8 was not in existence.

5. Mr. T.C. Govindaswamy, counsel for the applicant states that in terms of Paragraph 2001 of the Railway Establishment Manual, Vo.2 which is reproduced as under, applicant must be deemed to have acquired the status of a temporary

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employee on completion of 120 days from the date of initial engagement:

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Such of those casual labour engaged in open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e. given "temporary status") on completion of 120 days of continuous employment."

The learned counsel has further submitted that since the applicant had not been conferred with temporary status so far, she is not amenable to the RS(DA) Rules by virtue of Rule 2005 of the IREM, Vol.2 which is reproduced as under:

**"2005 Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be) (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules."**

6. Mr. Govindaswamy has also challenged the impugned order on the ground of inordinate delay in finalising and keeping the applicant under suspended animation for over 12 years.


7. Mr. Thomas Mathew Nellimoottil, learned counsel for respondents submitted that the applicant does not deserve any leniency as she has misled the respondents with regard to her date of birth in getting engagement as casual labour in 1975. As regards the merits of the case is concerned, he submitted that though Annexure A8 charge memorandum dated 29.8.1997 was processed further and an enquiry was conducted by the respondents, the same could not be pursued on account of the fact that many officials who have worked in the office have got transferred / retired during the long intervening period. Further, the set of papers in connection with the Annex. A8 charge memorandum were lost sight of and the incumbent officials working at present were not actually aware of the pendency of the proceedings. They have also submitted that there was no wilful negligence on

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the part of the present officials over the matter and nobody is liable to be held responsible for the lapse.

8. Mr. Thomas Mathew also submitted that the applicant having been worked in the railways is amenable to Rule 9 of the RS(DA) Rules, 1968 and is quite legal and valid.

9. We have heard the learned counsel for both the parties. As rightly argued by Shri Govindaswamy, the applicant not being a railway servant or a casual labour conferred with Temporary Status, the RS(DA) Rules, 1968 cannot be invoked against her. Moreover, it is seen from the records that the applicant was engaged initially as casual labourer in 1975 and it is not the case of the respondents that she had produced any bogus certificate with regard to her date of birth at that time for securing engagement as Casual Labourer. In fact, according to the respondents themselves, she did not produce any certificate in 1975. However, according to them, she has submitted an affidavit dated 22.1.1993 stating that she was 38 years as on that date, which would mean that her date of birth is probably 22.1.1955 and in 1975 when she secured the job she was 20 years but the fact is that she has two daughters whose dates of births are 2.4.1960 and 20.5.1965 respectively. Therefore, she wrongly secured engagement as a casual employee giving the impression to the respondents that she had the minimum age for such engagement. It was in that back ground that this Tribunal, in its order in O.A 645/95 dated 07.03.1996(supra) gave an option to the Chief Personnel Officer to consider whether it was necessary to terminate the services of the applicant and other similarly placed casual employees or whether it was sufficient to correct their dates of birth and cause their superannuation accordingly. However, the respondents have initiated disciplinary proceedings against her under the RS(DA) Rules 13 years ago but it did not progress an inch further from the stage of show cause notice and they have been extracting service from her. Since the respondents by their own



inaction kept the case pending for several years and allowed the applicant to work for long period, it is quite unjust that her service should be dispensed with at this belated stage. We, therefore, quash and set aside the impugned memorandum dated 29.08.1997 as illegal consequently allow this O.A. Further, we direct the respondents to determine her date of birth on the basis of her affidavit dated 22.1.1993 and grant her temporary status/regularisation in service in her turn in accordance with the existing rules.

10. There shall be order order as to costs.

(Dated, the 10<sup>th</sup> June, 2010.)

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER

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