

Date	Office Report	Orders
	26.07.94	<p>OA = 35/90</p> <p>Present: Shri S. K. Bisama, Counsel for the Applicant.</p> <p>Shri H. K. Gangwani, Counsel for the Respondents.</p> <p>Both counsels were heard at considerable length of time. Reserved for Judgment. Judgment will be pronounced in the Court on 29.07.94.</p> <p style="text-align: right;">18</p> <p>(Smt. Lakshmi Swaminathan) Member (Judicial)</p> <p>S.K.</p> <p>5.8.1994</p> <p>Order has been pronounced in the Court to-day.</p> <p style="text-align: right;">B.W. B.W.D. C.G.</p>

33

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 35/90

New Delhi this the 5th day of August, 1994.

COMAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

S. C. Saxena S/O M.S.L. Saxena,
R/O Kolhai, Near Piare Lal School,
Shahganj, Agra.

... Applicant

By Advocate Shri S. K. Bisaria

Versus

1. Union of India through
Secretary, Ministry of
Railways, Rail Bhawan,
New Delhi.

2. General Manager,
Central Railway,
Bombay VT.

3. Divl. Railway Manager (P),
Central Railway, Jhansi.

4. Sr. Divl. Commercial Suptd.,
Central Railway, Jhansi.

... Respondents

By Advocate Shri H. K. Gangwani

O R D E R

Shri S. R. Adige, Member (A) -

In this application, Shri S. C. Saxena, has
prayed that the selection test for the post of
Chief Ticket Inspector held on the basis of circular
dated 10.7.1989 on 29.7.1989 and 5.8.1989 as well as
the viva voce test held on 14.12.1989 and 18.12.1989
be quashed and the applicant be declared as confirmed
CTI in the grade of Rs.2000-3200 w.e.f. September,
1987; and for release of salary as CTI from August 1990 till his
supernumerary in

2. The applicant's case is that on being selected through the Railway Service Commission, he joined the Railways as a Ticket Collector and after receiving promotion in different grades, he has been working from 10.9.1987 as CTI in the grade of Rs.2000-3200 on ad-hoc basis continuously. He states that according to the instructions contained in Chapter-31 of the Indian Railway Establishment Manual (IREM) a mandatory procedure has been laid down for filling up the post of CTI which is a selection post and is to be filled from the cadre of Travelling Ticket Inspectors. The applicant states that the selection shall be made by selection board from amongst eligible candidates after all the eligible candidates who fall within the zone of consideration have been invited and the best suitable candidates as per merits are selected after holding written test, examining the service records and the viva voce test. The manner in which marks should be allowed, panels should be drawn up, approved, published and amended, if necessary, are all subject to detailed procedures, according to the applicant. He states that the respondents issued a circular for holding a selection test for the post of CTI on and 25.10.1986 and thereafter again on 8.11.1986 for the third time in March, 1987. In March, 1987 only five candidates appeared in the selection test, and although the applicant was eligible to appear, his name was not included in the list of eligible candidates for selection, and thus came to be superseded for selection as CTI. However, on 10.9.1987 he was appointed as

CTI on ad-hoc basis and has been working as such continuously since then. On 10.7.1989, the respondents issued a circular for holding a selection test for the post of CTI in which the applicant's name also appeared in the list of eligible candidates, and he appeared in the written test held on 29.7.1989 and 5.8.1989. The respondents declared the results of the written test on 7.12.1989 in which the names of 14 candidates appeared, but the applicant admits that his name did not appear in the list of successful candidates. He alleges that this was because of favouritism and also because the question papers were not in accordance with the syllabus and there was violation of the selection procedure. He alleges that he has been working on ad-hoc basis against a permanent vacancy for more than two years and is thus entitled to be confirmed/regularised on this post, and in this connection claims that several persons who were also promoted on ad-hoc basis as CTI retired as such with all the retirement benefits as CTI without appearing in any written or viva voce test. He, therefore, claims that he is also legally entitled for confirmation and regularisation as CTI.

3. The respondents have challenged the contents of the U.A. in their counter affidavit and pointed out that the post of CTI is a selection post and regular promotion to this grade is made after undergoing selection. They aver that the selection procedure as prescribed under the rules has been strictly followed. No doubt the services of the applicant were

utilised as a CTI on ad-hoc basis, but the selection proceedings had started on 10.7.1989, and in the written test held on 29.7.1989 in which the applicant also participated, he was not successful and, therefore, did not figure among the 14 candidates who became eligible for the viva voce test. The respondents point out if at all the applicant had any grievance regarding the procedure that was followed in making selections, he would not have appeared in the written test, and the fact that he did it, makes it clear that his grievance as to the procedure followed is merely an after-thought. They, therefore, state that this application is fit to be rejected.

4. We have heard the learned counsel for the applicant, Shri S. K. Bisaria, and Shri H. K. Gangwani on behalf of the respondents.

5. The applicant has himself admitted that he appeared in the written test for selection to the post of CTI on 29.7.1989, but was not successful in that test, and hence could not be called for the viva-voce test. No evidence has been produced to substantiate his allegation that favouritism was shown in the written test or that the question papers were not in accordance with the syllabus or there was violation of the procedure prescribed for making selections. If indeed that was the case, the applicant has failed to explain why he appeared in the written test, and waited till the results were declared on 7.12.1989 before submitting representation challenging the legality and validity

of the said selection on 17.12.1989 as claimed by him in paragraph 4 (G) of his application. It is, therefore, difficult to disagree with the respondents that this claim of the applicant is little more than an after-thought.

6. The applicant has laid great stress on the reply to paragraph 4 (E) of the O.A. in the counter affidavit filed by the respondents, wherein it has been attempted that the applicant was working as CTI from 10.9.1987 only. On this basis, Shri Bisaria has tried to argue that the applicant was working continuously as CTI since 10.9.1987 and is, therefore, fit to be regularised as CTI and get the pay as well as the terminal benefits of that post.

7. However, Shri Gangwani, learned counsel for the respondents, has drawn out attention to the order dated 22.7.1992 in C.C.P. No. 223/92 in O.A. No. 35/90. In that C.C.P. the applicant, who is also the applicant in the present case, had contended that the respondents had committed contempt inasmuch as they had not paid him the salary of the post of CTI notwithstanding the fact that the order of the respondents dated 25.5.1990 reverting the applicant from the post of CTI was stayed by the Tribunal on 5.6.1990 and that order was confirmed on 13.9.1990. The Tribunal in its order dated 22.7.1992 noted that the order reverting the applicant from the post of CTI on 25.5.1990 was passed while the applicant was on leave and there was, therefore, no difficulty in the matter of a new incumbent taking charge in place

of the applicant on that post of CTI on 1.6.1990. Hence, if any interim order restraining the respondents from reverting the applicant from the post of CTI was passed on 5.6.1990, it would not affect the reversion order, as that order had already been given effect to. There was no interim mandamus directing the respondents to reinstate or re-induct the applicant as CTI, and hence, the applicant's grievance that there had been contumacious violation of the order dated 5.6.1990 was without substance.

8. In view of this categorical finding of the Tribunal, the applicant's contention that he was working as CTI on ad-hoc basis continuously since 10.9.1987, and was, therefore, eligible for regularisation, has no merit, for it is clear that he was reverted on 25.5.1990, consequent to his being declared unsuccessful in the written test for the post of CTI. ^{For the same reasons he is also not entitled to salary as CTI from Aug '90 as claimed by him. In}
9. In so far as that assertion of the applicant is concerned, wherein he has alleged that several other persons, who were promoted on ad-hoc basis as CTIs were allowed to retire as such without appearing in the written test or viva voce test, the respondents have pointed out that those employees were regularly promoted against the restructuring carried out in the department and their selection was conducted on the basis of records as per the prescribed instructions. The employees who appeared in the selection in November, 1986, but retired from service before the completion of the selection procedure were allowed to

retire as CTIs as they were already officiating on ad-hoc basis, and the case of the applicant is not covered by any of the above conditions. *Prima facie*, the applicant has not furnished any material to cast doubts on these averments made by the respondents.

10. In the result, the impugned orders warrant no interference, and this application is dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

Adige
(S. R. Adige)
Member (A)

/as/