

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 143/97

Present : Hon'ble Mr.D. Purkayastha, Member (J)
Hon'ble Mr.V.K.Majotra, Member(A)

Sochanlal, Son of Late Shyamal, resident of Chototangra,
P.O. Kharagpur, Dist. Midnapore, working as Chief Train
Examiner, Kharagpur Division, South Eastern Rly

...Applicant

-Vs-

- 1) Union of India, through the Chairman, Railway Board, Rail Bhawan, New Delhi
- 2) The General Manager, South Eastern Railway, Garden Reach, Calcutta-43
- 3) Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43
- 4) Divisional Railway Manager, South Eastern Railway, Kharagpur Division, P.O. Kharagpur, Dist. Midnapore
- 5) Senior Divisional Mechanical Engineer, South Eastern Railway, Kharagpur Dn., P.O. Kharagpur, Dist. Midnapore
- 6) Sr.Dvl Personnel Officer, South Eastern Railway, Kharagpur Division, P.O. Kharagpur, Dist. Midnapore
- 7) Shri G.D.Behra, Carriage Foreman, Posted at CF/NMP, C/o CF/CWI (Spl) Nimpura, Kharagpur, South Eastern Railway, Dist. Midnapore
- 8) Shri A.K.Bhattacharjee, Carriage Foreman, posted at CF/KGP, C/o CF/CWI(Spl) Kharagpur, South Eastern Railway, Dist. Midnapore.

For the applicant : Mr.B.Chatterjee
Mr.G.Bhakat

For the respondent : None

Heard on : 7-8-2001

Date of order : 10-8-2001

ORDER

Mr.V.K.Majotra, Member(A) :

The applicant joined the Railways as Trade Apprentice in 1963. He was promoted as Chief Train Examiner on 9-7-82. He worked as such till 12-5-92 whereafter he has been functioning as CTE in the scale of Rs2000-3200/- . According to him he became due for promotion under the Scheme of restructuring sanctioned by the ~~Railway~~ Board vide Annexure A1 dated 5-2-93. According to him the classification of the posts covered by restructuring scheme as ~~selection and non-selection~~ remained unchallenged but the selection procedure for the posts ~~clarified as~~ selection was modified to the extent that the selection was to be based only on scrutiny of

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service records and CRs without holding any ^{1b} viva-voce test. A similar procedure was to be adopted for non-selection of posts at the time of restructuring. This modified selection was adopted as a one time measure. The applicant has stated that an integrated seniority lists of CTE's was prepared in February, 1994, in which applicant's name appeared at S1.No.77 as a SC employee. Thereafter a provisional panel for promotion to the post of CF/CWI(Spl) in the scale of Rs2375-3500/- (RP) of Carriage and wagon Organisation against restructuring of cadre was published on 17-10-94. The applicant's name did not find place in the said provisional panel. The applicant has alleged that certain juniors were placed in the provisional panel. The applicant has stated that in reply to a

^{1b} representation of the applicant submitted through Zonal Secretary, All India Scheduled Castes & Scheduled Tribes Railway Employees' Association (AISCSTREA) vide Annexure A4 dated 18-4-95 the respondents informed that the applicant could not qualify himself in the suitability test for promotion to the post of CF/CWI(Spl) in the scale of Rs.2375-3500/-. Subsequently, the applicant was directed by the respondent on several occasions to appear in suitability test for promotion to the post of CF/CWI, but the applicant declined to appear in them. He made two representations on 20-9-95 and 15-1-96 which did not elicit any response from the respondents. The applicant has maintained that the respondents should have conducted the scrutiny of Confidential Records restricted to the period upto 1993 only. The applicant has alleged that the respondents have acted arbitrarily in bypassing the applicant for promotion. He has sought quashing and setting aside of the order dated 10-11-94 Annexure A3, whereby applicant's two juniors were accorded promotion and promotion was denied to him in accordance with the modified procedure for selection. He has sought direction to the respondents for promotion to the upgraded post of CTE with effect from the date his juniors were promoted with consequential benefit.

2. In their reply, the respondents have stated that the selection in question ^{was} held on the basis of scrutiny of service records and Confidential Reports without holding any written and

viva-voce test, as per the relaxed procedure under the scheme of restructuring. The applicant's records were put up to the competent authority, who was nominated to adjudge the suitability of the staff for promotion to the post of Carriage Foreman/Chief Wagon Inspector/Spl. However, the applicant was found unsuitable for promotion and he could not be promoted on the basis of seniority-cum-suitability. According to the respondents, the applicant had made a representation against his non-promotion through the Zonal Secretary, AISCSTREA. The Association was informed about the reason and circumstances of non-promotion of the applicant vide Annexure A4 dated 18-4-95.

3. Whereas, we have heard the learned counsel of the applicant and considered the pleadings of both sides and material available on record, we proceeded to decide the case in the absence of the learned counsel of the respondent in terms of Rule 16 of CAT Procedure Rules 1987 as he did not appear even on second call around 4 p.m.

4. The learned counsel of the applicant stated that whereas the respondents were not supposed to hold any suitability test under the Restructuring Scheme for promotion to the higher grade and were supposed to decide about the suitability of the applicant on the basis of his seniority, service records and Confidential Reports, the respondent rejected the claim of the applicant for promotion by holding a suitability test and without considering his service record and Confidential Reports. The learned counsel stated that respondents have not specifically denied the allegation that the respondents held a suitability test against relaxed procedure under the Scheme of restructuring. Relying on AIR 1967 SC 109 (Jahuri Sah and Others v Dwarika Prasad Jhunjhunwala and Ors) he stated that this allegation should be taken to be admitted by respondents. He further contended

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that they did not respond to his representations dated 20-9-95 and 22-1-96 (Annexure A6).

5. From the records available in the file, we find that apart from representations dated 20-9-95 and 22-1-96 (Annexure A6), the applicant had prior to these representations represented to the respondents through the Zonal Secretary, AISCSTREA. The respondents informed this Association vide Annexure A4 dated 18-4-95 that the applicant could not qualify in the said suitability test to the post of CF/CWI (Spl) in the scale of Rs2375-3500/-.. In their reply the respondents have stated to have not held any written and viva-voce test for the selection in question. According to them the competent authority nominated to adjudge the suitability of the staff for the said promotion had seen the relevant records including that of the applicant who was found unsuitable for promotion. This recommendation was approved by the head of the Establishment. In the absence of any allegation of bias or malafide against Head of the Department or the competent authority nominated for scrutiny of the records it cannot be said that the service records and the ACRs of the applicant had not been examined by him and adverse recommendation was made against applicant without any rhyme or reason. When the Zonal Secretary, AISCSTREA through whom the applicant had made the earliest representation against his non-promotion had been informed about the reason for applicant's rejection for promotion, non response to applicant's subsequent individual representations cannot be held against the respondents. When the respondents have on an affidavit (reply affidavit) affirmed that no written or viva-voce test was held for the aforesated promotion and only records were seen, the statement 'could not qualify himself

in the suitability test for promotion' in Annexure A4 would not carry greater weight as it appears that the Chief Personnel Officer (Admn) casually, used the expression 'suitability test'. Obviously, he meant that the applicant was not found suitable for promotion. It is also stated that the respondents had prepared the panel in accordance with the modified procedure as laid down by the Railway Board vide their Establishment Sl.No.13/93. Thus, we do not go along with the applicant in respect of the allegation that the respondents had held suitability test and did not judge suitability of the candidates on the basis of their service records and Confidential Reports. On the basis of respondents' affidavit which has not been refuted by way of any rejoinder by the applicant we hold that the respondents did not hold any written and viva voce test but conducted the selection in question on the basis of the service records and confidential reports of the candidates as per the one time relaxed procedure.

6. If regard is had to ~~the~~ reasons recorded and discussions made above, we do not find any merit in this OA which is dismissed accordingly. No costs.

V.K.Majotra
(V.K.Majotra) 10.8.2001

Member(A)


(D.Purkayastha)
Member(J)