

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

OA No.455/1996

Date of order: 12-3-98

V.N.Sharma, at present employed on the post of Chief Ticket Inspector, Western Railway at Gangapur City, Kota Division, Kota.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager (Estt.), Kota Division, Kota.
3. Sr. Divisional Commercial Manager (Estt.), Kota Division, Western Railway, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

This OA was earlier disposed of by order dated 28.1.1997. However, on a Review Application filed by the applicant being allowed by order dated 7.8.1997, the order dated 28.1.1997 passed in the OA was recalled. Accordingly, a fresh order is being passed in this OA.

2. In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the order dated 16.7.96 (Ann.A1) containing a provisional panel for selection to the post of Chief Ticket Inspector (CTI) scale Rs. 2000-3200 (RP) and order dated 19.7.96 (Ann.A2)

AW

granting promotion to persons in the aforesaid post in the aforesaid scale ignoring the case of the applicant may be quashed with all consequential benefits and the respondents may be directed to conduct the selection for the aforesaid post as per rules. An alternative prayer by the applicant is that he may be given benefit of the direction contained in the circular letter dated 19.3.1976 mentioned in para 4(11) of the OA and he may be considered to have been selected for the post of CTI scale Rs. 2000-3200 (RP) as per the panel dated 16.7.96 and he may be given promotion at par with his junior with all consequential benefits.

3. The facts of the case as stated by the applicant are that he was initially appointed as a Ticket Collector in 1968. After getting promotions from time to time, he is now working on the post of CTI on ad hoc basis. He is eligible for promotion to the post of CTI scale Rs. 2000-3500 (RP) on regular basis. The respondents conducted a selection for the post of CTI vide an order dated 11.5.96 (Ann.A4). Eleven posts were to be filled up. The applicant was eligible for selection. His name appears at Sl.No.5 of the eligibility list. Persons at Sl. Nos. 1 and 2 in the eligibility list had already been promoted as CTI. Persons at Sl.Nos. 3 and 4 in the eligibility list were also not promoted due to administrative/disciplinary reasons. Thus the applicant was senior most person to be considered for promotion. An interview was conducted for the purpose of selection on 12.7.96 and the applicant fared well. The applicant has, however, not been granted promotion but persons junior to him placed in the selection panel have been granted promotion

28

vide orders Ann.A1 dated 16.7.96 and Ann.A2 dated 19.7.97. The reason for ignoring the applicant for promotion was ~~due to~~ bias against him on account of his filing an OA against the earlier panel dated 17.4.95 prepared by the respondents. The applicant has been working on the post of CTI on ad hoc basis for the last six months. Since the applicant has not been selected on a regular basis, vide order dated 19.7.96 (Ann.A2) he has been ordered to be reverted to the lower post.

5. Further according to the applicant, the post of CTI is a selection post to be filled up on the basis of the procedure prescribed in para 219 of the Indian Railway Establishment Manual (IREM) Vol.I. The respondents have not followed the entire procedure prescribed in para 219 as aforesaid. Instead, they have conducted selection on the basis of viva-voce alone. Since the applicant has been working on the post of CTI on ad hoc basis satisfactorily, his case is covered by the Railway Board's circular No. 831-E/63/2X (E-IV) dated the 19th March, 1976 which reads as under:

"Sub:- Record Note of the meeting of the Deputy Minister for Railways and the Railway Board with the Headquarters of the Personnel Department of the Railway Administration held in New Delhi on 27.11.95.

A copy of an extract from the Record Note Circulated vide Board's letter No. 75-E(SCT) 15/48 dated 9.12.75 as received vide their office letter No. E(NG I-75) PMI/264, dt. 25th Jan, 1976 is reproduced below:-

"2.2 Panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee

29

reaching the field of consideration should be saved from harassment."

According to the aforesaid Record Note, the applicant cannot be declared as failed in the viva-voce because he has been working satisfactorily on the post. The respondents have not conducted any written test for judging the professional ability, contrary to the provisions of the rules. The applicant is fully entitled to promotion as he is the senior most person working on the post of CTI on ad hoc basis, satisfactorily. The Hon'ble Supreme Court in the case of R.C.Srivastava v. Union of India and Ors. in SLP No. 9856/93 decided on 3.11.1995 held that where a person has been working on ad hoc basis on a higher post satisfactorily, he should be given benefit of Record Note No. 2.2 in the process of selection. Since the applicant's juniors have been granted promotion to the post of CTI scale Rs. 2000-3200 (RP), he is also entitled to promotion, as non-grant of promotion would amount to violation of Articles 14 and 16 of the Constitution. The applicant has a clean service record. He is, therefore, entitled to be promoted on the basis of his clean service record, his seniority and after being granted the benefit of Record Note No. 2.2 even if the selection is on the basis of viva-voce alone.

6. The respondents in their reply have stated that the post of CTI is filled up on the basis of selection and seniority has no major role in selection. The applicant has failed in the selection and, therefore, his grievance that his juniors have been granted promotion ignoring his case has no validity. They have denied that the applicant was dropped from the selection list for the reason that he had filed an OA against the

Q

earlier selection. Since candidates had been selected for the post of CTI on regular basis, the applicant, who has been working on the post of CTI on ad hoc basis, had been reverted to a lower, substantive post to make room for the regularly selected candidates. The respondents claim to have conducted the selection strictly in accordance with the rules and have awarded marks in different categories as per the provisions contained in the IREM. The seniority as well as the service record of the applicant were also taken into account and it is only thereafter that the panel was formed. If the applicant claims any benefits of any circular of the Railway Board, he should annex a copy thereof with the QA. Only a portion of the circular has been quoted and unless the complete circular is produced before the Tribunal, it cannot be seen whether it is applicable in this case or not. As far as the judgment of the Hon'ble Supreme Court is concerned, it has no application to the present case, according to the respondents. If a person has not been selected, he has to make room for those who have been selected. They have further stated that it is not clear how the applicant has claimed that he has been performing service satisfactorily on the post of CTI on which he has been appointed on ad hoc basis. The applicant has also not impleaded persons junior to him as respondents in the QA with whose promotion he is aggrieved.

7. The applicant has also filed a rejoinder to the reply filed by the respondents. Certain written arguments had also been submitted by the respondents before the QA was disposed of earlier by order dated 28.1.97.

QJ

8. During his oral arguments, the learned counsel for the applicant stated that the Record Note reproduced in the judgment of the Hon'ble Supreme Court in the case of R.C.Srivastava was issued in the form of or as part of ^a circular of the Railway Board which had statutory force. He contended that the provisions contained in the Indian Railway Establishment Code (for short the "Code") Vol.I has been framed by the President under Article 309 of the Constitution. Rule 123 of the Code which is equivalent to earlier Rule 157 of the Code provides that the Railway Board have full powers to make rules of general application to Group-C and Group-D railway servants under their control. The circular dated 19th March, 1976 had been issued by the Railway Board under Rule 123 of the Code and therefore, had statutory force. He added that the provisions of the IREM under which the selection had been conducted and the applicant had been declared as failed on the ground that he had not secured 60% marks in the professional ability, did not have a statutory force. He relied upon the judgment of the Hon'ble Supreme Court in the case of Railway Board v. P.R.Subramaniam and Ors., 1978 SCC (L&S) 35, which according to him, laid down that the rules framed by the Railway Board have the force of rules framed under Article 309 of the Constitution, if these are of general application to non-gazetted railway servants or to a class of them. In this judgment, according to him, the Hon'ble Supreme Court had held that a circular issued by the Railway

A

Board which was of a general application would override ~~the~~ corresponding or a similar provision in the IREM, where there was a conflict between the two. He then referred to the judgment of the Allahabad Bench of the Tribunal in Ram Boojan v. Union of India through the Secretary to Government and Ors., 1996 (3) SLJ (CAT) 92, wherein the Tribunal had held that the Railway Board was competent to issue instructions from time to time to supplement the provisions of the Manual and such instructions have statutory force. Referring to the judgment of the Hon'ble Supreme Court in P.R.Subramaniam's case, the Tribunal held that in the event of any inconsistency between the provisions of the IREM and the Railway Board's circulars, the latter would prevail. He also relied upon a Full Bench Judgment of the Tribunal (Principal Bench), Wazir Chand v. Union of India and others, reported at pages 287 onwards of Vol.II of Full Bench Judgments of Central Administrative Tribunals (1989-1991) published by Bahri Brothers, Delhi, 1991 Edition. He referred to para 11 of the aforesaid judgment in which the Full Bench of the Tribunal had observed that a circular of 1982 ^{be} issued by the Railway Board could rightly be regarded as statutory in character, applicable to all the railway servants. He, therefore, stated that the circular issued by the Railway Board forwarding the Record Note, referred to earlier, had the force of a statutory rule and it overrode the provisions of para 219 of the IREM, if there was any inconsistency between the two. In the light of this position the applicant was entitled to the benefit of Record Note 2.2. Since the applicant had been working on the ad hoc post satisfactorily, there was no

QJ

reason to revert him from the post of CTI scale Rs. 2000-3200 on the ground that he had failed in the viva-voce and had, therefore, not been declared as passed in the professional ability by securing 60% marks therein.

9. The learned counsel for the respondents stated that the rules or paragraphs in the IREM were also ⁱⁿ statutory rules ^{asmuch} as these had been framed in pursuance of the power conferred on the Railway Board by Rule 123 of the Code (which corresponds to the earlier Rule 157 in the Code). On the other hand, the Railway Board's circular dated 19th March, 1976 on which reliance has been placed by the applicant had not been incorporated in the IREM, even though in the 1989 edition of the IREM it is available. This only suggests that the Railway Board never intended this circular to be a sort of general rule. Moreover, according to him, the applicant has not presented a copy of this circular alongwith the QA and, therefore, it would not be proper to place any reliance on this circular. Even if it is assumed that it is incorporated in the Hon'ble Supreme Court's judgment in R.C.Srivastava's case, which has been annexed by the respondents to the written arguments filed by them, the circular has been described by the Hon'ble Supreme Court as in the nature of an administrative direction and not as a rule. The Hon'ble Supreme Court has itself observed in R.C.Srivastava's case that a circular of the Railway Board cannot override a statutory rule. Para 219 of the IREM ^{which} provides that a candidate must secure 60% marks in professional ability to qualify for selection is a statutory rule and the provisions of the circular dated 19th March, 1976 and the Record Note incorporated therein are contrary to the provisions of para 219 of the IREM. Before the Hon'ble Supreme Court, the

34

counsel arguing the case on behalf of the Railways could not perhaps point out that the provisions of this circular dated 19.3.1976 incorporating the Record Note were in violation of the statutory provisions of the rules relating to selection. Now ^{that} it has been brought to the notice of the Tribunal that the provisions of the circular dated 19.3.1976 and the Record Note incorporated therein are contrary to the provisions of para 219 of the IREM, which is a statutory rule, the applicant cannot be granted any relief on the basis of the circular dated 19.3.1976 and the Record Note incorporated therein.

10. We have heard the learned counsel for the parties and have perused the material on record as also the judgments cited before us.

11. Insofar as, the circular dated 19.3.1976 is concerned, ~~it~~ has no doubt not been annexed by the applicant to the OA. However, it is incorporated in the Hon'ble Supreme Court's judgment in R.C.Srivastava's case delivered on 3rd November, 1995 in Civil Appeal arising out of SLP (C) No. 9866 of 1993, which has been annexed by the respondents to the written arguments filed by them. We, therefore, cannot doubt the authenticity/genuineness of the aforesaid circular merely because a copy thereof ~~is~~ not available alongwith the OA. The question now is whether this can be said to be a complete circular, which has been incorporated in the Hon'ble Supreme Court's judgment. We are of the view that its applicability or otherwise can be considered on the basis of whatever has been incorporated in the Hon'ble Supreme Court's judgment. No doubt, at one place it has been described as in the nature of an administrative direction (para 4 of the Hon'able

QJ

35

Supreme Court's judgment). In our view, there is no basis in the arguments that if it is merely an administrative direction ~~it~~ cannot be treated as a circular issued by the Railway Board which has general applicability. There is no separate definition of an administrative direction or of a circular available which would justify a distinction of this nature. Therefore, in the circumstances, we have to assume that it is a circular issued by the Railway Board, which has a general applicability.

12. Para 219 of the IREM ~~pro~~ provides that a candidate, in order to be included in the selection panel, must secure 60% marks in professional ability. Professional ability in this case was judged on the basis of viva-voce alone. It was ~~not~~ seriously disputed by the learned counsel for the applicant during his oral arguments that the respondents could resort to judging the professional ability on the basis of viva-voce alone as well, after dispensing with the written test. Thus, it would appear that there is an inconsistency between the provisions of para 219 and the Record Note circulated by the Railway Board's circular dated 19.3.1976. The Record Note provides that a person which has been working satisfactorily on a post on ad hoc basis should not be declared as unsuitable ~~in~~ the interview. Simply put, therefore, as per this circular, the applicant should not have been failed in the interview, if he was working on the ad hoc post of CTI scale Rs. 2000-3200 satisfactorily. The Hon'ble Supreme Court has, however, observed in its judgment in R.C.Srivastava's case that it was not pointed out on behalf of the Railways that the direction contained in the Record Note was inconsistent

9✓

with the statutory rule. The learned counsel for the respondents now seeks before us to show that the provisions of para 219 of IREM also constitute statutory rule and since there is an inconsistency between the two, the provisions of para 219 of IREM should prevail over those of the Record Note. It may, however, be stated that the provisions of IREM regarding selection were also before the Hon'ble Supreme Court, as can be seen from the fact that the Hon'ble Supreme Court has itself observed at para 2 of the judgment that a candidate is required to secure not less than 60% marks (30 out of 50 marks) in professional ability and not less than 60% marks in the aggregate to be eligible for empanelment. Thus, it is obvious that the provisions of the IREM were very much before the Hon'ble Supreme Court when it had observed that it had not been shown that the directions contained in the Record Note were inconsistent with any statutory rules. The clear implication is that the Hon'ble Supreme Court did not regard the provisions of para 219 of the IREM as a statutory rule.

13. From the judgment of the Hon'ble Supreme Court in the case of P.R.Subramaniam, referred to above, it is apparent that a circular issued by the Railway Board, Ex.R-9, was treated as overriding the provisions contained in Rule 20(b) of IREM Vol.I. It does appear to us, therefore, that a circular issued by the Railway Board in view of the provisions of Rule 123/157 of the Code would prevail over those contained in the corresponding provisions of IREM to the extent that the latter are inconsistent with a circular issued by the Railway Board.

92

37

Same view has been expressed by the Allahabad Bench of the Tribunal in Ram Poojan's case.

It is not necessary for us to discuss the ratio of the Full Bench Judgment of the Tribunal in Wazir Chand's case.

14. We are, therefore, of the view that the provisions of the Railway Board's circular dated 19.3.1976 incorporating para 2.2 of the Record Note would have effect, notwithstanding the provisions contained in para 219 of the IREM Vol. I. Therefore, if the applicant has been working satisfactorily on the post of CTI scale Rs. 2000-3200 on ad hoc basis, the respondents would not be justified in declaring him as failed and not eligible for inclusion in the selection panel for the post of CTI, on the ground that the applicant had failed to secure the minimum 60% marks in the professional ability judged on the basis of the viva-voce. The respondents shall, therefore, in the first instance determine, on the basis of the service record of the applicant, whether his performance on the post of CTI on ad hoc basis has been satisfactory. If it has been satisfactory, they shall not declare the applicant as failed in the test for professional ability judged on the basis of viva-voce. In such a situation, they shall have to assume that the applicant has secured the minimum 60% marks in the test for professional ability, ~~judged~~ ^{securing} on the basis of viva-voce. Other criteria laid down in para 219 of IREM for selection including ^{securing} 60% marks in the aggregate shall, of course, have to be fulfilled


R

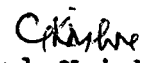
30

by the applicant. If on the basis of the above exercise he is found eligible for inclusion in the selection panel, his name shall be included therein and he shall also be given appointment to the post of CTI on a regular basis as and when the next vacancy on the post of CTI scale Rs. 2000-3200 is available. The exercise of judging whether the applicant is eligible for inclusion in the selection panel shall be completed within a period of three months from the date of receipt of a copy of this order.

15. The respondents have raised an objection that the applicant had not impleaded any person junior to him as respondent in the OA, with whose promotion he was aggrieved. It is true that the applicant had not impleaded any persons junior to him, who have already been granted promotion to the post of CTI on regular basis. We direct that if the applicant is found eligible for inclusion in the selection panel on the basis of the directions given in the preceding paragraph and is granted promotion as a consequence thereof, he shall not be granted seniority over any person who has already been promoted to the post of CTI scale Rs. 2000-3200 on a regular basis.

16. The OA is disposed of accordingly. No order as to costs.


(O.P. Sharma)
Administrative Member


(Gopal Krishna)
Vice Chairman