

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date or order: 22.04.2003

OA No.591/96

Vijay Kumar Sharma s/o Shri Laxmi Narain Sharma r/o Q.No.288/III, Ganpati Nagar Railway Colony, Jaipur, presently working as Chief Train Examiner, Carriage and Wagon Superintendent, Western Railway, Jaipur.

.. Applicant

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. P.F.Mathur - counsel for the applicant

Mr. R.G.Gupta - counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.Gupta.

The applicant is aggrieved of the order dated 14.9.95 (Ann.A1) wherein his name is excluded from the panel for promotion to the post of Chief Train Examiner (CTEX) carrying a pay scale of Rs. 2000-3200 and were filled on the basis of modified selection procedure. In relief, he has prayed for appropriate directions to include his name in the panel. It has also been prayed for direction to the respondents to treat him as substantive holder of the post of CTEX w.e.f. 1.3.93 as having been promoted to the said post under the scheme of modified selection procedure and as also for not calling the

applicant to appear in the further selection test for the said post, on various grounds stated therein.

2. The case of the applicant as made out, in brief, is that:-

2.1 He was initially appointed on the post of Train Examiner vide order dated 11.12.79. Thereafter, he was promoted to the post of Head Train Examiner in the year 1988 carrying a pay scale of Rs. 1600-2660. Based on the policy of restructuring and upgradation for providing further avenue of promotion and to remove stagnation, he was promoted to the post of CTXR in the pay scale of Rs. 2000-3200 vide order dated 6.7.93 (Ann.A3). He was also paid arrears of pay from 1.3.93. Although the order contained the term 'provisional promotion' but for all purposes, his promotion was substantive. The DRM vide order dated 8.12.93 advised that the promotions made vide order dated 6.7.93 were ad-hoc.

2.2 To his utter surprise, the order dated 14.9.95 (Ann.A1) was issued containing a panel of 12 persons for promotion on the post of CTXR in the pay scale of Rs. 2000-3200 under the same restructuring scheme. The name of the applicant does not find place in the aforesaid order. In the Note No.4 under the aforesaid order, it has been mentioned that one post has been kept vacant for one Shri Onkar Kulshrestha, CTXR who was working on deputation out of Jaipur Division. Since the name of the applicant was not included because of incorrect calculation of the vacancies, he made representation dated 5.2.96 (Ann.A2).

2.3 The Railway Board issued circular dated 27.1.93 (Ann.A4) with regard to restructuring of Group-C and Group-D categories. In the said order, it was provided

that vacancies as existing prior to 1.3.93 and those arising on that date are to be filled in a particular manner. The promotions were to be affected 'as is where is' basis. Further, these vacancies were required to be filled on the basis of modified system of selection.

2.4 The respondent No.2 issued order dated 25.2.94 (Ann.A5) whereby S/Shri H.N.Sharma and Maharaj Singh were posted to Phulera on promotion from the pay scale of Rs. 2000-3200 to the pay scale of Rs. 2375-3500 and promotions were affected w.e.f. 1.3.93. These promotions were given under the scheme of restructuring and upgradation and these two posts were floated to the Jaipur Division. The occasion for floating the post arose for the reason that in para 13 of the scheme of upgradation and restructuring issued by the Railway Board dated 27.1.93 (Ann.A4), it has been provided that the posts are to be pin pointed on the 'as is where is' basis. Since S/Shri H.N.Sharma and Maharaj Singh were promoted in the higher scale of Rs. 2375-3500, therefore, two vacancies arose in the pay scale of Rs. 2000-3200 in addition to one vacancy also lying vacant on account of the fact that Shri Onkar Kulshrestha was on deputation and therefore, 3 vacancies were available in the pay scale of Rs. 2000-3200, which should have been filled by the respondents.

2.5 An order dated 13.12.95 (Ann.A6) was issued by the respondent No.2 whereby one Shri Thawar Singh was promoted and transferred. In the note of the aforesaid order, it has been mentioned that if Shri Thawar Singh is willing for refixation of pay, he may send a representation in the stipulated time. As and when the orders for transfer are issued, it is always mentioned that the post has been transferred, but it has not done in

the present case.

2.6 The Railway Board issued a letter dated 21.9.85 with regard to the reservation for SC/ST. It has been clarified that if a person belonging to these castes is on deputation or for certain reasons is not physically available, then the next senior most reserved community candidate should be considered and promotion may be given. It is further provided that same procedure should be adopted in case of unreserved roster point. In the present case Shri Onkar Kulshrestha was on deputation, therefore, the name of the applicant ought to have been considered and he being the seniormost, is entitled to get promotion.

2.7 The respondents have not decided his representation and have not included his name in the panel for promotion to the post of CTXR in the pay scale of Rs. 2000-3200 issued on 14.9.95 (Ann. A1), therefore, he believes that his representation has been rejected.

3. The respondents have contested this application. Briefly stated, they have submitted that:-

3.1 Vide order dated 6.7.93, the applicant was promoted as CTXR under the upgradation scheme w.e.f. 1.3.1993 purely on provisional basis. However, subsequently the order was modified and the benefit of promotion as given w.e.f. 1.3.93 was cancelled and instead the promotion was ordered to be given w.e.f. the date of joining of the applicant purely on ad-hoc basis. No option was given for fixation of pay to a person promoted on provisional/ad-hoc basis. It is denied that the promotion of the applicant was made on substantive basis.

3.2 In the modified selection, 13 vacancies were

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determined for the post of CTMF out of which two each for SC and ST categories were reserved. Thus, in effect, there were only 9 vacancies of general candidates. The determination of vacancies was made in accordance with the policy of the Railway Board, according to which the vacancies available on or before 1.3.93 were included in this determination which is correct as per the extant rules. The name of the applicant being a general candidate does not figure in the provisional panel dated 14.9.95 (Ann.A1) on the basis of his seniority.

3.3 S/Shri H.N.Sharma and Maharaj Singh were given promotion w.e.f. 1.3.93 on the post of CTMF in the pay scale of Rs. 2375-3500 on the basis of floating of post. As per rules, in case of floating, two posts of lower grade CTMF of the pay scale of Rs. 2000-3200 are transferred to another division where from higher grade post in the pay scale of Rs. 2375-3500 is floated. Thus, there is no increase in the overall cadre strength. Therefore, it is incorrect that even after the promotion of S/Shri H.N.Sharma and Maharaj Singh in the pay scale of Rs. 2375-3500, there were two more vacancies in the pay scale of Rs. 2000-3200 as on 1.3.93. The order dated 13.12.95 has no co-relation with the order of upgradation dated 1.3.93. On promotion, if any employee wants to get the fixation of his pay from the date of accrual of increments to him, he is required to give option as per the rules contained in Para 2017 of the Indian Railway Establishment Code (IREC).

3.4 Shri Onkar Kulshrestha was working elsewhere on deputation basis and, therefore, he holds a lien. One vacancy was thus filled only on adhoc/provisional basis. A post against which lien is held by an employee working

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outside the cadre on deputation basis is not filled in on regular basis. Moreover, another employee Shri A.K.Verma who is senior to the applicant has also not been given this benefit which the applicant is claiming w.e.f. 1.3.93.

3.5 Representation dated 14.9.95 was not received in the office of answering respondents. The applicant is presently working on the post in the pay scale of Rs. 2000-3200 on provisional basis and as and when regular selection shall take place, the applicant shall have to face the selection and only on selection, he can be given promotion on regular basis. The applicant cannot be given promotion on regular basis on the post of CTEB under the modified selection because he does not qualify the same as per his seniority. Presently, the applicant is not being reverted because of availability of the vacant post.

4. In the rejoinder filed by the applicant, briefly stated, he has submitted that:-

4.1 As per Para 4 of the scheme dated 27.1.93, promotion to the selection grade posts shall be made without holding any written test but on the basis of scrutiny of service records and ACRs. He was senior enough and was promoted to the post of CTEB in the pay scale of Rs. 2000-3200 only after scrutiny of records and ACRs. There was neither any provision in the rules for ad-hoc promotion nor the applicant was promoted on ad-hoc basis. Further, there is no mention in the office order dated 6.3.93 that his promotion was on ad-hoc basis. The word 'provisional basis' as mentioned in the order has been used for the reason that the proceedings in the case of J.C.Malik and Ors. Vs. Union of India in SC/ST reservation, the matter of promotion was pending before

the Hon'ble Supreme Court. Accordingly, it cannot be inferred that the applicant was not promoted on regular basis. The pay of the applicant was fixed retrospectively from 1.3.93 as per directions of the Railway Board in the scheme dated 27.1.93 (Ann.A4). Since the promotion of the applicant was on regular basis under the Scheme of restructuring as per Railway Board directions at Ann.A4, there was provision for option of pay fixation which was contained in the promotion order of the applicant. It is incorrect on the part of the respondents to submit that the promotion was not substantive.

4.2 Assuming but not admitting that there were only 13 vacancies, the promotion of two ST candidates is against the norms and procedure. Only 7.5% of the posts were reserved for ST candidates and thus only one post can be filled in by ST candidate and not as mentioned in the order dated 14.9.95 (Ann.A1). The applicant is senior to Shri Roop Chand Rajoria (SC). Therefore, he cannot be denied promotion at this belated stage in preference to the SC candidate. Besides, inclusion of Shri Ram Chandra Meena (ST) at Sr. No.10 of the office order dated 14.9.95 (Ann.A1) is wrong and illegal since it exceeds 7.5% quota provided for ST candidates and since only one candidate can be promoted as per rules. The office order dated 14.9.95 is meant to favour the junior and ineligible employees against the rules and provisions of ST/SC candidates.

4.3 The panel once approved by the competent authority cannot be cancelled or amended except for procedural error and with the approval of the higher authority than the one who approved the panel. No such procedure has been followed by the respondents in this

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case. In formulation of the fresh panel dated 14.9.95, his name has been arbitrarily excluded.

4.4 Only the lowest grade vacant post in the scale Rs. 1200-2040 were to be transferred against floating of posts in the pay scale of Rs. 2375-3500, as may be seen from the order of the General Manager dated 16.1.97 (Ann.A9). Vide Ann.A8, there were 27 posts in the pay scale of Rs. 2000-3200 which were reduced to 25 after 1.3.95 as two of these posts were transferred to Rajkot Division in exchange of two higher posts in the pay scale of Rs. 2375-3500. Against 25 posts only a list of 22 persons were sent. S/Shri H.N.Sharma and Maharaj Singh belong to other division. As on 1.3.93, they came on transfer to the Jaipur Division in the pay scale of Rs. 2375-3500 against the provisions of floating of posts. Their transfer and posting to Jaipur division was incorrect and against the provisions of para 13 of the Railway Board circular dated 27.1.97 (Ann.A4). Besides, these two persons were transferred to Jaipur Division only on 15.6.95. Therefore, their transfer cannot alter the position of staff in the scale of Rs. 2000-3200, who were already promoted w.e.f. 1.3.93 vide order dated 6.7/8.93 (Ann.A3). One Shri Thawar Singh was promoted on provisional basis but was allowed option vide letter dated 13.12.95 (Ann.A6). It is incorrect on the part of the respondent No.2 to suggest that the order dated 13.12.95 is not co-related with the upgradation order dated 1.3.93. In fact it is not a case of upgradation but a case of restructuring of cadre w.e.f. 1.3.93. His name already appeared at Sr. No.4 of the order dated 6.3.93 which has not been altered/cancelled within a period of 2 years i.e. the life of the panel. He has nowhere mentioned that he

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had made representation dated 14.9.95. He has made representation dated on 5.2.96 which has not been decided by the respondents. The applicant possesses the acknowledgment of the representation.

5. Through an MA No.395/02, the respondents have filed a copy of the order dated 6.9.01 passed in OA No.388/97 submitting that identical OA was dismissed by this Tribunal.

6. Vide MA No.20/03, filed based on the clarification sought by the Tribunal, the respondents have submitted that when an employee proceeds on long deputation, the consequent vacancy is not filled in permanently but can only be filled on ad-hoc basis as provided in para 238 of the IIEC Vol.I, copy of which is annexed at Ann.F1. As per Para 10 of the Railways Board's letter dated 27.1.93 (Ann.A2), the reservation is applicable in the higher grades arising as a result of restructuring. It has further been submitted that 13 vacancies were assessed for promotion in the post of CTME scale Rs. 2000-3200, out of which 2 vacancies were reserved for SC and 2 for ST and remaining 9 for general category. At that time 13 vacancies were placed in the 40 point roster. The point No.17 was for ST and one vacancy for ST was carried forwarded from the earlier shortfall. Thus two vacancies were reserved for ST. Show-cause notice was not given to the applicant because rectification had already been issued vide letter dated 8.12.93 (Ann.B5) and the same was not challenged by the applicant before any forum of law and this fact has been concealed by the applicant.

7. Heard the learned counsel for the parties and perused records.

7.1 The applicant was promoted vide order dated 6.7.93 (Ann.A3) in the pay scale of Rs. 2000-3200 based on the restructuring order of the Railway Board dated 27.1.93 (Ann.A4), w.e.f. 1.3.93. On promotion, the applicant was posted to Phulera. Later on, vide order dated 8.12.93 (Ann.B5), it was ordered that benefits of promotion w.e.f. 1.3.93 as ordered is not admissible and that the same is admissible when the employee takes charge of the post. The applicant continued at Jaipur. A panel vide order dated 14.9.95 (Ann.A1), was issued by the DFM with reference to the letter of General Manager dated 14.3.95. It contained names of two SC and two ST employees alongwith the names of general candidates. The name of the applicant does not figure in the said panel. One general vacancy was kept for one Shri Onkar Fulshrestha, who was on deputation. The applicant is aggrieved of not including his name in the panel of 14.9.95 and treating his earlier promotion as on ad-hoc basis.

7.2 The first contention of the learned counsel for the applicant is that his promotion, as per the order dated 6.7.93 (Ann.A3), was on regular basis. The order nowhere states that the applicant was promoted on ad-hoc basis. Therefore, non-inclusion of his name in the subsequent panel and not treating him as regularly promoted w.e.f. 1.3.93, is arbitrary and illegal.

The contention of the learned counsel for the respondents is that the promotion vide order dated 6.7.93 was provisional. He further submitted that this order of promotion needed rectification on account of improper

determination of vacancies including those reserved for SC/ST candidates and further that the promotions were made effective from 1.3.93 instead from the date of assumption of the charge as per Railway Board order. Therefore, keeping in view the directions of the General Manager, a panel was issued vide order dated 14.9.95. The name of the applicant did not appear in the said panel because he was sufficiently junior and also reservation has to be kept in view. He also submitted that no show-cause notice was issued as the said promotion of the applicant was treated as ad-hoc and since no reversion took place and further that the applicant continued on the said post on ad-hoc basis till he was regularly promoted, the respondents in the larger interest of the department as well as the applicant, did not order reversion and, therefore, no show-cause notice was issued.

We are of the view that the error committed by the respondents was corrected by formulation of fresh panel vide order dated 14.9.95. None of the junior to the applicant belonging to his category is included in the said panel as conceded by the learned counsel for the applicant during the course of arguments. Presuming that the applicant was required to be given a show-cause notice before the issue of the order dated 8.12.93, the applicant represented only in February, 1996 against this order and filed this OA in October, 96. Further, the respondents treated his promotion as on ad-hoc basis and the applicant was not reverted from ad-hoc post till he was regularly promoted. Accordingly, we do not think that any legal right of the applicant has been infringed.

7.3 With regard to the second contention of the learned counsel for the applicant that no reservation is

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applicable in this case, we have perused the order of the Railway Board dated 27.1.93 (Ann.A4), whereby it has been stated that the existing vacancies as well as those arising out of the restructuring scheme have to be clubbed together and promotion has to be accordingly ordered. Therefore, it is not a case of simple upgradation of the existing posts, since the earlier regular vacancies were also taken into account and further that the order of the Railway Board clearly provides that the reservation has to be made applicable. Accordingly, we do not agree with the contention of the learned counsel for the applicant that reservation should not be made applicable.

7.5 The third contention of the learned counsel for the applicant is that only one vacancy could be reserved based on 7.5% reservation for ST category. The respondents have replied that for 13 vacancy, one ST point No.17 was reserved and there was another carry forward vacancy. Accordingly, the action of the respondents in keeping two vacancies for ST category, as per rules at that time, can not be said to be arbitrary. Further, if the applicant is not aggrieved for reserving two vacancies for SC category, he should also be not aggrieved if a junior SC candidate is promoted as per the reservation policy.

7.6 The fourth contention of the applicant that two vacancies arose in the grade of Rs. 2000-3200 against floating of posts in the pay scale of Rs. 2375-3500, is considered devoid of merit keeping in view the contention of the learned counsel for the respondents that in floating principle, the vacancies in the lower grade cannot be operated upon and further the order dated 16.1.97 (Ann.A9) relied by the applicant itself states that this order will have prospective effect and the

applicant is aggrieved of the panel dated 14.9.95.

7.6 With regard to the fifth contention of the applicant, having perused the records, we find that the name of the applicant is lower down the line in the seniority of the general candidates and presuming that the respondents were bound to fill the vacancy arisen from the long term deputation, on regular basis, the applicant would not have been included in the panel dated 14.9.95 since the names of senior(s) to the applicant also do not figure in the panel of 14.9.95.

7.7 Based on the material on record, the other grounds taken by the applicant are considered to be devoid of merit.

8. In view of above discussions, we do not find any merit in this application and accordingly it is dismissed.

9. No order as costs.



(M.L.CHAUHAN)

Member (J)



(H.O.GUPTA)

Member (A)