

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 141/1997
T/A/ No.

199

DATE OF DECISION 5.07.2002

JOGENDRA PAL 'B'

Petitioner

Mr. P.V. Calla

Advocate for the Petitioner (s)

Versus

UOI & ORS.

Respondent

Mr. Anupam Agarwal, proxy for
Mr. Manish Bhandari

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.P.Nagrath, Administrative Member

The Hon'ble Mr. J.K. Kaushik, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

J.K. Kaushik
(J.K. Kaushik)
Judl. Member

A.P.Nagrath
(A.P.Nagrath)
Adm. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Original Application No. 141/1997
Date of Decision: This is the 5th day of July, 2002.

The Hon'ble Mr. A.P. Nagrath, Administrative Member
The Hon'ble Mr. J.K. Kaushik, Judicial Member

Jogendra Pal 'B', S/o Shri Butamal,
aged 47 years, Goods Driver,
Scale Rs. 1350-2200, Resident of Q.No.684-B,
New Railway Colony, Kota.

.....Applicant.

versus

1. The Union of India through
the General Manager,
Western Railway,
Churchgate, Mumbai.
2. The Divisional Railway Manager,
Western Railway,
Kota Division,
Kota.
3. The Senior D.E.E. (T.R.O.),
Western Railway,
Kota Division
Kota.

.....Respondents.

Mr. P.V. Calla, counsel for the applicant.
Mr. Anupam Agarwal, proxy counsel to
Mr. Manish Bhandari, counsel for the respondents.



ORDER

[Per Mr.A.P.Nagrath]

By filing this O.A., the applicant has assailed the order dated 30th July, 1996 (Annex.A/1) under which, a panel of the persons found suitable for promotion to the post of Goods Driver Grade 1350-2200 has been issued. Applicant's name does not appear in this panel. His prayer is that the respondents be directed to declare him as duly selected and interpolate his name at the appropriate place in this panel.

2. The brief matrix of the case is that while the applicant was working as Assistant Driver, he had passed Promotional Training Course. Subsequently, vide order dated 25/26.7.1995 (Annex.A/2), he along with 40 others were promoted as Goods Driver on ad hoc basis. In this order, names of Shri Ram Chandra 'B' and Shri Nand Singh 'L' were not included. The applicant had also completed the training course at Kanpur and then high speed training course at Z.E.T.C., Baroda. Having successfully passed the training in these establishments, he worked as a Co- Driver in high speed trains. A regular selection for the post of Goods Driver scale Rs. 1350-2200 was initiated vide Notification dated 31.10.1995/ 1.11.1995 (Annex.A/6) for filling up 270 vacancies. The result of the written examination was declared on 12.7.1997 vide Annex. A/7, wherein, the name of the applicant also appeared amongst the successful candidates at sl. No. 46. The Viva Voce test was held in the month of July, 1996 and a panel was issued vide the impugned order dated 30.7.1996 in which the name of the applicant does not appear amongst the successful candidates.

3. The grievance of the applicant is that while he had successfully completed all the training courses and even worked as a Co-Driver in high speed trains including the Rajdhani Express, but, he has been declared failed in the viva voce. He specifically emphasizes that he was already

working as a Goods Driver on ad hoc basis and has been failed only in the viva voce and thus, the action of the respondents is contrary to the ratio of the case of Shri R.C. Srivastava Vs. Union of India and Others in which Hon'ble the Supreme Court had held that giving regard to the Note 2.2 as indicated under Ministry of Railways letter dated 25.1.1976 'a person promoted on ad hoc basis and having passed the written examination, cannot be failed only in the viva voce'.

4. We have heard the learned counsel for the parties and perused the relevant record. The respondents have also produced before us the proceedings of the impugned selection. We had directed the respondents to place before us, copies of the C.R. Dossiers relating to the applicant as also Shri Ram Chandra 'B', however, they have failed to comply with this order and have only produced one copy of the C.R. in respect of Shri Ram Chandra 'B' for the year 1992-93. We are constrained to observe that respondents have not displayed adequate deference to the orders of this Tribunal. We have now to proceed and decide the case with the help of records made available in addition to the averments made in the O.A. and the reply of the respondents.

5. The learned counsel for the applicant stated that the matter was squarely covered by the ratio of the judgement of the Apex Court in the case of R.C. Srivastava and that the applicant was entitled to the benefits of Note 2.2 as contained in the Railway Board's letter dated 25.1.1976. The learned counsel for the respondents Shri Anupam Agarwal, while opposing this contention of the opposite side, argued that the ratio of the said case was not applicable as here it was a case of promotion to a safety category post. All eligible candidates have to pass not only the written test but also acquit themselves successfully in the viva voce. They are required to obtain 60% marks in the professional ability as also



in the aggregate. According to the learned counsel, the applicant did not qualify in the professional ability test and thus, has no claim for being placed on the panel.

6. We have given our careful consideration to the arguments advanced by the learned counsel for the parties. We reject the contention of the learned counsel for the respondents that the benefit of Note 2.2 of Railway Board's Letter dated 25.1.1976, cannot be extended to the applicant on the ground that the post of Goods Driver is a safety category post. This issue had come up for consideration before a Bench of this Tribunal in which one of us (Mr. A.P.Nagrath), was a Member, in a batch of O.As i.e. 120/2001, 121/2001 and 202/2000 - Pritam Singh Vs. Union of India and ors. decided on 31.8.2001. We had come to the conclusion that there cannot be any distinction between the posts falling in safety category and non-safety category in so far as the applicability of the ratio of R.C. Srivastava's case is concerned. It is suffice to state here that notwithstanding that the post of Goods Driver is a safety category post, in case, the applicant who was working already on ad hoc basis as a Goods Driver, has been failed only because of the marks assigned to him during the viva voce, shall have the benefit of protection of Note 2.2 referred to supra. Again adverting to the case of Pritam Singh and a batch Vs. UOI and Ors., we would like to quote para 10 of that judgement which reads as under :-

"10. ... even if a person is officiating on ad hoc basis, he does not automatically become entitled to be promoted unless he has obtained qualifying marks in the professional ability as also in the aggregate. This would only mean, in our view, that in respect of those who are officiating on ad-hoc basis, no part of the selection process will be curtailed and they will be assessed alongwith others both in their professional ability as also for the other factors like personality address, leadership and records of



service. It will be useful and important to reproduce the import of this Record Note as brought out by the Apex Court in their judgement :-

"Indeed, the said Circular only gives guidance in the matter of exercise of the power by the Selection Committee while considering the suitability at the stage of interview and says that a person who has been working on the post for which selection is being made on ad hoc basis and whose work is quite satisfactory (emphasis supplied) should not be declared unsuitable in the interview. The learned counsel for the respondents has not been able to show that this direction is inconsistent with any statutory rule. We are, therefore, unable to hold that the said direction in the Circular dated March 19, 1976 is inconsistent with any statutory rule."

7. Obvious inference of this observation of the Apex Court as also the intention behind the Circular dated 25.1.1976 is that, at the time when ad hoc arrangement was made, the authority competent to take a view of ad hoc promotion, would be expected to take into account the record of service of the employee being considered for such ad hoc promotion. In the event record of service is not satisfactory, it would be expected that the administrative functionary exercising the authority shall take a look at the record of service carefully so that at the time of regular selection the embarrassment of failing the senior persons officiating on ad hoc basis, having passed the written test, could be avoided. If the record of service was satisfactory, we do not find any reason for that person not obtaining sufficient marks to qualify in the professional ability once he has already cleared the written examination. In our view, the Record Note is more in the form of guidance to the members of the Selection Committee and also to the authority approving promotion of an employee. Even after such guidance, if the authorities do not exercise adequate care, such situation are bound to arise causing otherwise



avoidable embarrassment to the affected employee.

8. Now, let us examine as to how the applicant has fared in the written test and assessed in the viva voce. We have seen the assessment sheet of the candidates/ ^{who} appeared before the selection board and find that applicant's name figures at Sl. No. 45. He has obtained 23.2 marks out of 35 in the written examination whereas in the viva voce he has been given only 5 marks out of 15. In the personality and leadership, he has been given 10 marks whereas, in record of service, 8 marks out of 15 have been awarded to the applicant. Let us compare this with the marks obtained by Shri Ram Chandra 'B', whose name appeared at Sl. No. 1. In the written examination, he has secured 21 marks out of 35, in the viva voce/interview, he has been given 9 marks out of 15 and in the record of service 10 marks were given out of 15. It is interesting to note that when the 'ad hoc' promotion was ordered, Shri Ram Chandra 'B' was not considered suitable obviously for the reason that his record of service was not considered satisfactory. It will be relevant to note that in the respondents' own reply in para (v) wherein, it has been stated that 'ad hoc promotions were made from amongst the candidates who had passed the necessary training and in the case of those whose service record was not found to be proper or against whom some disciplinary action was pending, were denied promotion'. It is clear that Shri Ram Chandra 'B' was not considered suitable for being promoted on ad hoc basis whereas, the applicant was so promoted and had continued to work in the grade. He was also used as Co-Driver in high speed trains and admittedly, had passed all the requisite trainings. When a person not found suitable could get 10 marks in the record of service, we wonder, what was the basis with the selection committee to assign only 8 marks to the applicant. The respondents have not chosen to produce the C.R. Dossiers in respect of the applicant as also of Shri Ram Chandra 'B', before us. The Viva Voce

Board has given only 5 marks to the applicant out of 15 . Obviously, in his case that he failed to secure 1.8 marks more in the professional ability and 3.8 marks in the record of service. It is a clear case where the applicant has been unfairly treated. The respondents by their conduct of not producing the records, have further strengthened our view that the applicant was not assessed properly during the interview and he was also not correctly evaluated in respect of record of service. It is a fit case, where the benefit of Note 2.2 of Railway Board's letter dated 25.1.1976 and the ratio of R.C. Sharma's case, would squarely apply. The applicant deserves to be placed on the panel of Goods Driver in the grade of Rs. 1350-2200 (RPS).

9. In view of the discussions made above, we direct the respondents to treat the applicant as having duly qualified in the selections to the post of Goods Driver grade Rs. 1350-2200 (RPS) and assign him at the appropriate place in the impugned Panel dated 30.07.1996 at Annex. A/1 as per law and rules, within a period of one month from the date of receipt of a copy of this order. Further, the applicant shall be entitled to all consequential benefits including any further promotion which might have been given to his juniors, seniority of the applicant having been determined in terms of this order. The applicant shall also be entitled to difference of pay and allowances which become due to him consequent to implementation of this order and the pay and allowances actually drawn by him.

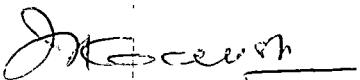
10. Before parting with this order, we would like to commend to the appropriate authority i.e. Member Staff, Railway Board, to consider reviewing the procedure of selection inasmuch as the need for holding a viva voce examination after the written test, could be obviated. This appears to have already been implemented in respect of recruitment from open market. The case of the serving employees certainly stands on better



footing. This will also do away with the possibilities of personal prejudices of the officers in the selection committees coming into play.

11. The O.A. is disposed of accordingly. A copy of this order be sent to the Member Staff, Railway Board, New Delhi, for considering the suggestion in the preceding paragraph.

12. The parties are left to bear their own costs.


[J.K.Kaushik]

Judl. Member


[A.P. Nagrath]

Adm. Member

[mehta]