

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 6 September, 2001

OA No.388/97

Nand Kishore Verma a/o Shri Ram Niwas Verma r/o 290/5, Kalward Scheme, Railway Colony, Jaipur at present working as Chief Train Examiner, O/o the Senior Divisional Mechanical Engineer, Western Railway, Jaipur

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur
3. Shri Prem Das 'B' Chief Train Examiner, Carriage and Wagon, Western Railway, Phulera.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondent Nos.1 and 2.

Mr. P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel for respondent No.3

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Rizvi, Administrative Member

Applicant, in this OA, is aggrieved by respondents' Office Order dated 10.9.1997 (Ann.A1) by which he has been reverted from the post of Chief Train Examiner carrying the pay scale of Rs. 2000-3200 to the lower post of Head Train Examiner (scale Rs. 1600-2660), whereas the respondent No.3 has been promoted from the post of Head Train Examiner to the post of Chief Train Examiner on ad-hoc basis. Prior to his reversion, the applicant was also working as Chief

[Signature]

Train Examiner on ad-hoc basis. The applicant is further aggrieved by the respondents' Office Order dated 4.8.1997 by which viva-voce test for the post of Chief Train Examiner fixed for 5.8.1997 has been postponed till further orders. Hence, this OA.

2. Briefly stated, the facts of the case are that after acquiring diploma in Mechanical Engineering in the year 1989, the applicant, who is a Scheduled Caste candidate, was appointed as Train Examiner (pay scale Rs. 1400-2300) on 28.12.1981, ^{and} on which post he was confirmed on 17.3.1994. Later, he was promoted as Head Train Examiner in the pay scale of Rs. 1600-2660. Having been a good worker with satisfactory performance, the applicant was in due course promoted to the post of Chief Train Examiner on ad-hoc basis in the pay scale of Rs. 2000-3200 by respondents Officer Order dated 31.7.1997 (Ann.A3). The private respondent No.3 was, however, left out on the ground of bad service record as referred to briefly in the aforesaid order dated 31.7.1997. While the applicant was thus promoted on ad-hoc basis, the respondents simultaneously initiated the process for filling up the vacancies for the post of Chief Train Examiner by issuing notification dated 7.4.1997. 19 vacancies of Chief Train Examiner were to be filled up after following the prescribed procedure. Alongwith the aforesaid notification, a list of eligible candidates was also issued. The same contained the name of the applicant as well as of private respondent No.3. Private respondent No.3 being senior to the applicant was consequently shown in the aforesaid list at Sl.No.22 whereas the applicant was placed at Sl.No.26. The written examination was thereafter held in May and July, 1997 and the result thereof was declared in July, 1997. Only 10 candidates were found suitable for viva-voce test. The applicant was one of them. The private respondent No.3 did not figure in the aforesaid list of 10 persons as he had failed to clear the written test. The private respondent No.3 also

happens to be a Scheduled Caste candidate. The viva-voce test was to be held on 5.8.1997, but the same was postponed by the respondents' Office Order of 4.8.1997 (Ann.A2), *also impugned in this OA*.

3. We have heard the learned counsel on either side and have perused the material placed on record.

4. The learned counsel appearing on behalf of the respondents has submitted that private respondent No.3, who is admittedly senior to the applicant, was initially left out at the time of ad-hoc promotion of the applicant on the simple ground that in accordance with the information then available with the respondents, the private respondent No.3 had carried ~~out~~ a bad service record. This fact finds specific mention in the aforesaid Office Order dated 31.7.1997 (Ann.A3). Later, the respondents themselves discovered that the service record of private respondent No.3 was clean and that on the earlier occasion he was left out by mistake, instead the applicant promoted on ad-hoc basis. The respondents have rectified the aforesaid mistake, having regard to the seniority status of the private respondent No.3 and have proceeded to issue the impugned Office Order on 10th September, 1997 by which the private respondent No.3 has been promoted on ad-hoc basis to the post of Chief Train Examiner and simultaneously the applicant, being his junior, has been reverted to the post of Head Train Examiner. Thus, in the circumstances of this case, it is impossible to find fault with the aforesaid impugned order.

5. Insofar as, the deferment of the viva-voce test is concerned, the same was done on administrative grounds and for this again the respondents cannot be faulted. In course of time, as stated by the learned counsel for the respondents at the Bar, the viva-voce

test was held and the applicant has already been promoted regularly to the post of Chief Train Examiner. We have noted this position and find that, in the circumstances, there is no force in the plea advanced by the learned counsel for the applicant that the respondents lacked competence to defer the viva-voce test. The further plea taken by the learned counsel for the applicant that after having failed in the written test held in May and July, 1997, in pursuance of the notification issued for filling up the vacancies for the post of Chief Train Examiner, the private respondent No.3 should not have been appointed even on ad-hoc basis by the impugned order of 10th September, 1997, has also failed to convince us. We are aware that ad-hoc promotions are made only in those circumstances and on occasions in which for a variety of reasons it is not possible to fill up vacancies on a regular basis by following the time consuming procedures. Following the deferment of the viva-voce test, one such occasion had obviously arisen and, therefore, as pointed out by the learned counsel for the respondents, the respondents had proceeded to make ad-hoc promotions by issuing the impugned order of 10th September, 1997. As already stated, the private respondent No.3, being senior has correctly been promoted on ad-hoc basis and the applicant reverted by the same order. We are of the view that at the time of ad-hoc promotion, the respondents have committed no mistake by ignoring the fact that private respondent No.3 had failed in the written test. That test was held in pursuance of the notification for filling up of vacancies on regular basis, and accordingly his failure in the said test could adversely affect the private respondent No.3 only insofar as appointment on regular basis is concerned. Lastly, since the applicant now stands promoted regularly to the post of Chief Train Examiner vide respondents' order dated 18.12.1997, the situation from his point of view, stands finally resolved and satisfactorily too. Nothing in this OA, therefore, survives.

6. For all the reasons mentioned in the preceding paragraphs, the present OA is found to be devoid of merit and is dismissed. There shall be no order as to costs.

S.A.T.Rizvi

(S.A.T.RIZVI)

Adm. Member

S.K.Agarwal

(S.K.AGARWAL)

Judl. Member