

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 31.8 August, 2001

OA No.120/2001

Pritam Singh s/o Shri Bangali Mal at present working on the post of Permanent Way Inspector Grade-I in the office of D.E.T.S., Bandikui, r/o Plot No. 43, Bal Mandir Colony, Bajaria, Sawai Madhopur.

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Sr. Divisional Engineer (HQ) (Establishment), Western Railway, Jaipur

.. Respondents

OA No. 121/2001

S.K.Srivastava s/o Shri A.V.Srivastava at present working on the post of Permanent Way Inspector Grade-I, Western Railway, Jhunjhunu r/o E-3A, Railway Quarter, Railway Colony, Jhunjhunu.

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Sr. Divisional Engineer (HQ) (Establishment), Western Railway, Jaipur

.. Respondents

OA No.202/2000

Sunil Kumar Sinha s/o Shri Nag Narain Prasad at present working on the post of Section Engineer (Carriage and Wagon) in the office of the Coaching Depot Officer, Western Railway, Jaipur r/o Q.No.D-3, Type-III, Road No.2, Ganpati Nagar Railway Colony, Jaipur.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Sr. Divisional Mechanical Engineer, Western Railway, Jaipur Division, Jaipur
4. Shri Chandra Bhan Kumbhwani, Section Engineer (C&W) O/o the Coaching Depot Officer, Western Railway, Jaipur
5. Shri Ram Karan Sharma, Section Engineer (C&W) O/o the Coaching Depot Officer, Western Railway, Jaipur
6. Shri Sanjay Gupta, Section Engineer (C&W), O/o Coaching Depot Officer, Western Railway, Jaipur

.. Respondents

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

Mr.B.K.Sharma ] counsel for the respondents

Mr. S.S.Hasan ]

Mr. Manish Bhandari ]

CORAM:

Hon'ble Mr.A.K.Mishra, Judicial Member

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

ORDER

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

This batch of OAs is being decided through this common order as essentially the controversy involved in these three cases is similar in all the cases. The applicants have attempted to derive support from the order of Hon'ble the Supreme Court in R.C.Srivastava v. Union of India and Anr. in Civil Appeal No.37322 of 1995 arising out of SLP (C) 9866 of 1993 decided on 3.11.1995. The three applicants had been officiating on ad-hoc basis in the grade and post

for which subsequently the selections were held but the applicants could not find their names in the final panel. Their grievance is that they having been called for the viva-voce after the written test could not have been failed in the light of the judgment of the Apex Court in the case of R.C.Srivastava. They seek directions to the respondents to reconsider their cases to incorporate their names in the panel of successful candidates.

2. These three applications were taken up together for final disposal, though the OA Nos.120/2001 and 121/2001 were listed for admission only and third OA No. 202/2000 was, of course, listed for final hearing. The controversy involved generated a lively discussion, with both sides advancing arguments in support of their respective stand with able support by Mr. Shiv Kumar ~~xxxxxx B.B. Mathur~~ who voluntarily assisted the Court from the side of the applicants reinforcing the stand taken by the learned counsel Mr.P.V.Calla whereas learned counsel for the respondents Mr. Manish Bhandari, Mr. B.K.Sharma and Mr. S.S.Hasan found active voluntary support from Mr. U.D.Sharma in favour of the respondents. Both the sides cited the cases decided by Jaipur and Jodhpur Benches of the CAT to buttress their respective line of arguments apart from interpreting the orders passed by Hon'ble the Supreme court in R.C.Srivastava's case.

3. The learned counsel for the applicants referred to the case of Jaswant Sharma and ors. v. Union of India and ors. in OA No.864/92 decided on 22.9.94 by which the Tribunal had questioned the discretion given to the Selection Committee in allocating marks for written test and viva-voce examination for filling up vacancies of Artisans against 25% quota meant for serving staff and by their order quashed the said panel. We do not find any relevance of the said case in regard to the matter before us. It is not the case of the applicants that any discretion has been used by the Selection Committee in allocating marks for viva-voce and written test. It is not in dispute that procedure as per Para 219 of Indian Railway Establishment Manual

for  
/short, IREM) has been followed.

4. The other case cited by the learned counsel appearing on behalf of the applicants is V.N.Sharma v. Union of India and ors. in OA No.455/1996 decided by the Jaipur Bench on 12.3.1998, on review of the orders earlier passed on 28.1.1997. In the order in review, the implications of Para 2.2 of Record Note circulated vide Railway Board's letter No.(NG)1-75 PMI/264 dated 25.1.1976 had been extensively deliberated upon and it was held that the respondents would not be justified in declaring the applicant as failed and not eligible for inclusion in the selection panel for the post of CTI in grade Rs. 2000-3200, on the ground that the applicant had failed to secure the minimum 60% marks in the professional ability judged on the basis of viva-voce. The respondents were directed to assume that the applicant has secured 60% marks in case his working on ad-hoc basis was found satisfactory based on his record of service. The learned counsel for the respondents on the other hand, relied on the case of Manu Kumar v. Union of India and ors. in OA No. 22 of 1997 decided on 8.9.97 and reported in (1998) 37 ATC 26 CAT-Jodhpur in support of their stand that Railway Board's letter dated 24.1.1976 had no applicability when the selection panel was formed for the posts falling under 'safety category posts'. Their plea is that the two impugned selections before us for the posts of Permanent Way Inspector (for short PWI) grade Rs. 6500-10500 and Chief Train Examiner grade Rs. 6500-10500, which are safety category posts and thus the ratio of Manu Kumar's case should apply. The learned counsel also referred to the decisions rendered by Jaipur Bench in OA No. 260/2000 decided on 23.5.2001 and OA No. 281/99 decided on 10.8.2001 in which the principle laid down in Manu Kumar's case has been followed.

5. It may be relevant to mention here that in last two

mentioned cases, one of us i.e. Administrative Member, Mr. A.P.Nagrath was a member and delivered the judgment in these cases. It is also relevant to state here that the judgment in the cases of V.N.Sharma and Manu Kumar were heard by the same Bench. In the case of Manu Kumar, the Tribunal distinguished the facts from the case of R.C.Srivastava as decided by Hon'ble the Supreme Court and the reference to which has been mentioned supra.

6. Perusal of these cases brings out one fact clearly i.e. that the selections to the posts, not falling in 'safety categories', the ratio of the Apex Court's decision in the case of R.C.Srivastava has been followed, whereas for 'safety category posts' the facts have been distinguished and ratio of Manu Kumar's case has been followed. However, a notable feature which has arisen is that differing views have been taken by the Benches (both sitting at Jaipur) on the question whether provisions of Para 2.2 of Record Note of the circular of 1976 will have application where the mode of selection adopted is only viva-voce and no written test is held. In OA No.455/1996 it has been held that Railway Board's instructions under Para 2.2 of the Record Note shall apply even where mode of selection is only viva-voce. In OA No.260/2000, decided later, it has been held specifically that these instructions shall not apply at all to selections where the mode of selection is only viva-voce. Apparently, the ratio of V.N.Sharma's case was not brought to the notice of the Bench which decided OA No.260/2000, so consequently this was not discussed in the later case.

7. In this background, as brought out above, where different interpretations have emerged of the same administrative instructions, we consider it necessary to discuss the matter in

its entirety. This is more so when the learned counsel on either side not only vehemently put forth their stand, but also brought forth certain facts which, in their opinion, got missed not only when the cases were heard by the Jaipur and Jodhpur Benches of the Tribunal, but also before the Apex Court. One of the most important facts, according to the learned counsel for the respondents, was that in none of these cases and also in the case of R.C.Srivastava, Railway Board's letter No. E(NG) I-82-PMI-132 dated 9.8.1982 was produced before the Hon'ble Judges of the Supreme Court or Hon'ble Members of the Tribunal, which explicitly clarified any doubts which might have arisen while interpreting the meaning of instructions in the Railway Board's letter dated 25.1.1976.

8. Before proceeding with the individual OAs and the relief claimed by the applicants, we consider it necessary to examine at length the implications of the above referred judgments vis-a-vis the rule position, in the light of arguments advanced before us and the new facts which had not been placed before the Apex Court and the Benches of CAT. First, (and appropriately so, as the issues raised by the applicants take their origin from it) let us take the judgment of Hon'ble the Supreme Court in R.C.Srivastava's case. It was observed by their lordships of the Supreme Court that Railway Board's letter dated 25.1.1976 is an administrative direction and such administrative instructions supplement the rules on matters on which the rules are silent. This letter of the Railway Board contained Record Note of the meeting of the Deputy Minister for Railways and Railway Board with Headquarters of Personnel Department of Railway Administration held on 21.11.1975. These Record Notes were apparently circulated on the Zonal Railways where R.C.Srivastava was working vide that Railways letter No. 831-E/63/2X (E-IV) dated 19th March, 1976. The circular was reproduced in the judgment of the Apex Court, which we also do here as

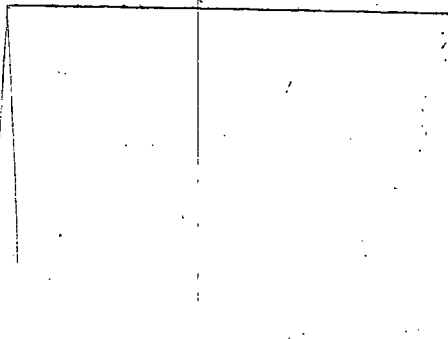
under:-

"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 22.11.75.

A copy of an extract from the Record Note circulated vide Board's letter No. 75-E(SCI) 15/48, dated 9.12.75 as received vide their office letter No. E(NG) I-75 PMI/264, dated 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 reaching the field of consideration should be saved from harassment."

9. It was observed by their lordships that reading of this circular shows that this does not run contrary to any statutory rules and that the learned counsel for the respondents (Railways) has not been able to show that this direction is inconsistent with any statutory rules. We pause here to examine whether there was any statutory rule which suggested that the Record Note was not in conformity with the rules. The learned counsel for the respondents before us referred to Railway Board's letter No. E(NG) I-82-PMI-132 dated 9.8.1982 which specifically discussed the implications of the Record Note circulated vide letter dated 25.1.1976 and clarified the implications of the said instructions as under:-



"In any case, there was no intention to confer any right on employees officiating on adhoc basis in higher posts to be selected and included in the panels for these posts." (emphasis supplied)

10. The stress in this letter is that 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 record of service. In other words, the provisions of Para 219 of the IREM would continue to remain applicable. In the case of V.N.Sharma (referred to supra) the Hon'ble Bench concluded that there was a inconsistency between Para 219 and the Record Note circulated vide letter dated 19.3.1976. That Bench of the Tribunal also observed that provisions contained in IREM do not have a binding force and the circular issued by the Railway Board in such a situation would prevail over the provisions in the IREM. We respectfully submit that we do not find ourselves in agreement with these observations of the Bench in the case of V.N.Sharma specifically in the context of Para 219 of the IREM. A careful reading of various Sub-paras of Para 219 would indicate that every provision there is a summarised extract of the policy circulars/instructions issued by the Railway Board from time to time. Every Sub-para is followed by a particular letter number under which the provisions narrated in the preceding portions was issued by the Railway Board. This, obviously, would mean that provisions under Para 219 of IREM are all arising out of policy circulars/



administrative instructions issued by the Railway Board from time to time and they cannot be said to have any less binding force, if not more, than the administrative instructions contained in the Record Note. Having said that, we would like to observe that we do not find any inconsistency in the provisions made under Para 219 of the IREM and the administrative directions given in the Record Note. Hon'ble the Supreme Court in the case of R.C.Srivastas have taken note of the complete selection process as contained in Para 219 of the IREM and have observed that the circular dated 19th March, 1976 does not run contrary to the statutory rules and in fact gives a guidance in the matter of exercise of power by the Selection Committee. We do not find any inconsistency with the provisions contained in para 219 of the IREM, instructions issued by the Railway Board by letter dated 9.8.1982 and the Record Note contained in Railway Board's letter dated 25.1.1976. It will be useful and important to reproduce the import of this Record Note as brought out by the Apex Court in their judgment:-

"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."

11.

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 adhoc arrangement was made, the authority competent to take a view of adhoc promotion would be expected to take into account the record of service of the employee being considered for such adhoc 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 adhoc 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. As we will discuss later, the cases before us are such which raise questions about style of functioning of the officers who processed and approved adhoc promotions of the applicants.

12. Under the existing scheme as per Para 219(g)(ii), the candidates who do not obtain 60% marks in the written test can also be called to appear in the interview provided their marks in the written test and the marks for notional seniority make a total of 60% or more. The question would arise whether such of the candidates who are called to appear in the interview by virtue of notional seniority marks can also seek benefit of the Record Note of the letter dated 25.1.1976. The answer without hesitation is 'no', and this is also in conformity with the view taken by Hon'ble the Supreme Court where in the order it has

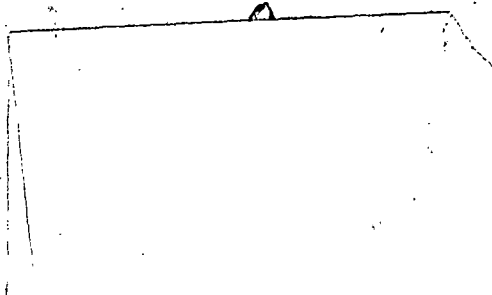
been stated that the applicant was entitled to the benefit of the said circular because he had secured more than 60% marks in the written test. Obviously, the candidate who does not obtain minimum of 60% marks in the written test cannot avail of the benefit of the directions in the circular dated 25.1.1976.

13. Another controversy in this case<sup>is</sup> arising out of the view taken by Jodhpur and Jaipur Benches of the Tribunal distinguishing the safety posts and non-safety posts. The consistent view so far has been that the provisions of circular dated 25.1.1976 will not be applicable to the safety posts. The learned counsel Mr. Manish Bhandari appearing on behalf of private respondents in OA No. 202/2000 forcefully argued that there can be no distinction whether the post falls in the safety category or non-safety category, but the learned counsel submitted that in view of the letter dated 9.8.1982 every candidate has to obtain atleast 60% marks in the written test and again atleast 60% marks in the professional ability comprising the marks of written test as also marks of viva-voce. The learned counsel was of the view that merely passing of the written test is not the basis to be placed in the panel, otherwise the very purpose of holding the viva-voce would be defeated. His contention was that a candidate must obtain atleast 60% marks in the written test and 60% marks in the combined result of written test and viva-voce and again atleast 60% marks in the aggregate including other attributes like personality address, leadership and record of service. We have given our careful consideration to the arguments advanced by Mr. Manish Bhandari and we find ourselves in agreement with him to the extent that there cannot be any distinction between the posts falling in safety category and non-safety category. To that extent the view taken earlier in Manu Kumar's case and followed in OA No. 281/99 decided recently on 10th August, 2001 appears to be inconsistent with the rules and

administrative instructions. The only criterion which makes a safety category different is that even if a candidate belonging to reserved category also have to be adjudged at par with the general candidates, inasmuch as, no relaxed standards are permitted. However, in case a candidate obtains 60% marks or more in the written test then he is equally entitled to the benefit of instructions contained in the circular of 25.1.1976.

14. Next point which comes up for consideration is whether the benefit of circular dated 25.1.1976 will also be admissible in a selection post where the mode of selection is only interview, and no written test is conducted? In our view, there can be no question of extending of this protection to such a selection process where the only mode is viva-voce. If that were to be the consideration, then instructions would say that in the event the mode of selection is only viva-voce then in the case of a person officiating on adhoc basis having satisfactory record, no interview should be held. That cannot be the intention of any rule or instructions. Thus, we respectfully differ with the view taken by the Hon'ble Bench in the case of V.N.Sharma.

15. To summarise above discussions and inferences drawn, the conclusion which emerges is that the circular dated 25th March, 1976 is not inconsistent with any statutory rules or instructions relating to departmental selections. This circular is more in the form of guidance for the Selection Committee Members and the authority approving adhoc promotion by an employee. In its applicability, there cannot be any distinction between safety category or non-safety category posts. However, the benefit of this circular cannot be availed of by such of the candidates who were called to appear for the viva-voce by virtue of notional seniority marks. The benefit is also not available for a selection process where the mode



of selection is only oral interview and no written test is conducted.

16. Now coming to the individual OAs. ~~XX~~ OA Nos. 120/2001 and OA No.121/2001 relate to selection for the post of PWI. In the reply by respondents they have taken a plea that the post of PWI falls in the safety category. The learned counsel for the applicants took a stand that the decision in Manu Kumar's case could not be applied to the impugned selection in OA No. 120/2001 and 121/2001 as the post of PWI does not belong to safety category. A counter affidavit to this effect has also been filed by the applicants stating that the post of PWI Gr.I (now redesignated as Section Engineer) scale Rs. 6500-10500 is not a safety post. To support their contention, the applicants placed reliance on Railway Board's letter dated 18.3.1989 (Ann.A6). In reply, the respondents have filed Railway Board's letter No.E(NG) I-75/PMI/44 dated 31.5.1982 to refute the contention of the applicant and submit that the post of PWI is a safety category post only. While we accept the version of the respondents that the post of PWI is a safety category post and it is for the department only to categorise placing of posts in a safety or non-safety category and not for the Tribunal to take a view, but because of the view we have taken in the preceding paragraphs, we do not consider this aspect as relevant for determining the issue involved in the controversy. The respondents have placed before us the proceedings of the selection. We find from these proceedings that Pritam Singh, applicant in OA No.120/2001 had secured only 20.65 marks in the written examination. He was called to appear in the interview only by virtue of notional marks of seniority as this is also clear from letter dated 30th January, 2001 where it has been clearly indicated that Shri Pritam Singh is being called for interview by virtue of notional marks of seniority. As held by us, a person who is called <sup>for viva-voce</sup> by virtue of ~~his~~ notional marks <sup>of seniority</sup> is not entitled to the benefit of the circular dated 25.1.1976. ~~xxx~~ Pritam Singh

obtained only 20.65 marks in the professional ability and thus has rightly not found place in the panel even though he was officiating on ad-hoc basis. We also find in his record of service he obtained only 6 marks out of 15 marks. In the case of S.K.Srivastava, applicant in OA No.121/2001 though he obtained 24.50 marks in the written test he was given only 5 marks in the interview. There could have been a case of the benefit of the circular provided his record of service was satisfactory. We find his record of service as poor and he obtained 4 marks out of 15 in the record of service and in spite of his marks of seniority he got only 26 marks out of 50 in other items like personality address, leadership and record of service etc. Obviously, with such a record of service, he cannot aspire to be placed in the panel. Thus, notwithstanding the administrative instructions of circular of 25.1.1976, the applicants in these two OAs have no case and there is no infirmity in not placing them in the panel of successful candidates.

17. In OA No.202/2000, the applicant Sunil Kumar Sinha has assailed the selection and panel dated 9.11.199 (Ann.A1) on two grounds. One being that he was already ~~claiming to be~~ officiating as Section Engineer on adhoc basis since 31.7.1997 and he was called for the interview but has been failed only on the basis of his performance in viva-voce. His another ground is that private respondents Nos. 4 to 6 were not eligible to appear in the selection as they were surplus staff of loco shed and had not been regularly redeployed in the Carriage and Wagon Department. We have perused the order dated 14.5.1999 (Ann.A6) and another order dated 14.5.99 (Ann.A7) by which private respondents were absorbed in the Carriage and Wagon Department after having been rendered surplus from loco shed. We do not find any force in the arguments of the applicants that regular absorption of the private respondents could take effect only

after their having acquired adequate proficiency in the work after undergoing necessary training. Redeployment of surplus staff serves an important public interest and those staff who were declared surplus and redeployed in another wing cannot be deprived of their seniority and other incidental rights. The impugned selection was notified on 31.8.99 i.e. after private respondents have been absorbed in Carriage and Wagon Department and written test was conducted on 10.10.99. We do not find any irregularity in permitting the private respondents to appear in this selection. Regarding the second ground of the applicability of circular dated 25.1.1976, we have perused the selection proceedings and we find that the applicant Sunil Kumar Sinha had cleared the professional ability portion of the selection process and had obtained 32.5 marks out of 50 marks. However in the aggregate he could secure only 54.5 marks out of 100 marks as his record of his has been found to be poor. Since in the aggregate he did not obtain 60% marks, he has rightly been declared unsuccessful and his name has not been placed in the panel.

18. As we find from the above, all the three applicants had very unsatisfactory record of service and despite this they were put to officiate in scale Rs. 6500-10500 on adhoc basis. It would appear that while approving adhoc arrangements, the competent authority did not care to have a look into their service records. If the service record was unsatisfactory, there could have been, in our opinion, no ground to grant them the benefit of adhoc promotion. It is a case where the administrative functionaries have failed to discharge their responsibilities properly. Notwithstanding such indifferent approach of the concerned administrative functionaries, the applicant have failed to establish their claim in their favour and all the three application are liable to be dismissed.

19. We, therefore, dismiss all the three OAs as these are

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without any merit. Parties are left to bear their own costs.

(A.P.NAGRATH)

Adm. Member

(A.K.MISHRA)

Judl. Member