

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
Contempt Petition No.19/2016  
in OA 241/2012**

**Dated this the 5th day of November, 2020**

**CORAM:**

**Hon'ble Shri. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Dr.A.K. Dubey, Member (A)**

Shri Husain A Shaikh,  
Son of Shri Abdul Sattar Shaikh,  
Age: 65 years,  
Retd. Sr. Assistant Loco Pilot  
Under DRM, BRC.  
Address: Morwala Jin, Nr. Post Office,  
Dabhoi – 320 160, Dist. Vadodara.... Applicant.

By Advocate Ms S S Chaturvedi

V/s

- 1 Union of India,  
Notice Serve through  
Shri G C Agarwal or his successor,  
General Manager, Western Railway,  
Churchgate, Mumbai – 400 020.
- 2 Shri Ashutosh Gandal or his successor,  
Divisional Railway Manager,  
DRM Office, Western Railway,  
Pratapnagar, Baroda – 390 004.      ... Respondents

By Advocate Shri M J Patel

**ORDER (ORAL)**

Per Shri Jayesh V Bhairavia, Member (J)

The applicant has filed this contempt petition for non implementation of order dated 30<sup>th</sup> November 2015 passed in OA 241/2012 wherein respondents had been directed as under:-

*“..... Therefore, there will be an order for specific implementation of the order dated 11.04.2001 within one month as we have already found that the applicant has passed the necessary barrier. OA is allowed. No costs.”*

2 The facts in brief as stated by applicant leading to the present CP are as follows:-

2.1 The applicant aggrieved by the inaction on the part of respondents regarding his non promotion as Shunter despite the fact that he had qualified in the selection and his juniors had already been promoted as Shunter, filed OA 298/2009.

2.2 After hearing both the parties and perusing the records, the said OA came to be disposed of vide order dated 21<sup>st</sup> October, 2011 with following direction:-

*“13 In result what is required is implementation of the order dated 11.04.2001. Respondents are directed to implement this order and to regulate the consequential benefits as per rules. In so far as claim for arrears etc, are concerned, the respondents would no doubt keep in mind the provisions of RBE No.98/97 and the extant provisions and rules as on the date of promotion i.e. 11.04.2001. OA is accordingly allowed. No costs.”*

2.3 The applicant retired on 02.06.2011 and PPO was issued by the respondents. As he had not been extended the benefit as per direction of the Tribunal dated 21<sup>st</sup> October, 2011 in OA 298/2009, applicant filed another OA 241/2012 which came to be disposed of by order dated 30<sup>th</sup> November, 2015. Vide this order also respondents were directed to implement the order dated 11.04.2001 within a period of one month. The respondents filed SCA No.1327 of 2016 against this order which came to be rejected vide order dated 28.01.2016 and upheld the decision of this Tribunal.

2.4 Even after decision by Hon'ble High Court vide its order dated 28.01.2016 in SCA 1327/2016, respondents have not implemented the order and hence applicant has filed the present Contempt Petition on 2<sup>nd</sup> May 2016 seeking a direction to the respondents to implement the judgment of the Tribunal and to take severe action against respondent nos.1 and 2 for not implementing the judgment of Tribunal wilfully.

3 In response to the notice on CP, the respondents have filed their reply wherein it has been stated that the respondents have complied with the directions issued by this Tribunal after dismissal of the SCA by the Hon'ble High Court of Gujarat. In support of said submission the counsel for respondents referred to Memorandum dated 09.02.2016 (Ann. R/1) wherein it is stated as under:-

*“Western Railway*

*Divisional Office,  
Vadodara*

*No.E/L/839/5/15 Vol.III*

*Date: 09.02.2016*

**MEMORANDUM**

*Sub: Promotion Reversion & Transfer of Class-III Staff Shunter- Mech.  
Deptt. – BRC Division – Case of Shri Hussain A Shaikh  
Retired ALP-I, Dabhoi.*

*Ref: 1) Judgement of High Court of Gujarat, Ahmedabad in SCA  
No.1327 of 2016 dtd. 28.01.2016.  
2) CAT-ADI's order dated 30.11.2015 in O.A. No.241 of 2012.  
3) Memorandum No. E/L/839/5/15 Vol.IV dtd. 11.04.2001.*

*.....  
“In reference to the above Shri Hussain A Shaikh, ALP-I scale Rs.5200-20200+2400(GP) (Scale 4000-6000 Pre revised scale Vth Pay commission) retired from railway service on superannuation on 31.05.2011. In the above referred judgment of CAT ADI dated 30.11.2015 which has been upheld by Hon'ble High Court, he is promoted as Shunter (Scale 4000-6000 Pre revised scale Vth Pay commission) Scale Rs.5,200-20200+2400(GP) from the dated 11.04.2001 i.e. the date of promotion order of Shunter issued by this office.*

*This has the approval of ADRM.*

*(Sudha P Rao)  
APO – III  
For DRM(E)BRC*

4 It is further submitted that since the respondents have complied with the direction of the Tribunal, the CP be dropped.

5 The applicant is not happy with the reply of the respondents. The memorandum dated 09.02.2016 does not reflect the promotion increment or any intention to revise the pension. Accordingly the applicant before the promotion dated 11.4.2001, his pay was 3950/- whereas the applicant's junior promoted alongwith him namely Husain Hamidmiya Sheikh and Narsih

J, as also one Mr Nasir Ahmed and the promotion date is 11.04.2001 whose pay was fixed at Rs.5400/- by adding one increment. Therefore, the applicant's pay is required to be recalculated by adding one increment when the original post and promotion post are same, then the candidates are entitled for one increment and additional running allowance. This Tribunal directed the respondents to implement the order dated 11.04.2001 and to regulate the consequential benefits as per rules in OA 298/2009. The said direction was again ordered to be implemented by this Tribunal in second OA i.e. OA 241/2012 decided on 30.11.2015. The applicant has also placed additional documents by way of filing additional affidavit and placed reliance on RBE No.244/99 dated 27.09.1999 and RBE No.156/2001 dated 17.08.2001 (Ann. 6 & 7) which mandate minimum benefit on promotion as per the recommendation of Vth CPC. Since the respondents have not granted the consequential benefit of increment it cannot be said that respondents have complied with the order passed by this Tribunal.

On the other hand counsel for the respondents submit that as per the direction issued by this Tribunal the applicant has been promoted as Shunter (scale 4000-6000 pre-revised scale VIth pay commission), scale Rs. 5200-20200 + 2400 (GP) from the dated 11.4.2001 i.e. the order of promotion issued by this office. He retired on superannuation from Railways on 31.05.2011. Accordingly the directions are fully complied as the applicant has been granted the benefit as per the rule.

Considering the aforesaid submission, it is noticed that sufficient compliance has been made. Accordingly the CP is dropped. Notice are discharged.

(Dr A K Dubey)  
Member(A)

(Jayesh V Bhairavia)  
Member(J)

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