

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH

**O.A.NO.** 262/88 with M.A.377/97  
**~~T.A.NO.~~**

DATE OF DECISION 14.10.1997

Ghogha Amarsinh Petitioner

Mr. K.K. Shah, Advocate for the Petitioner [s]  
Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent [s]

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The Hon'ble Mr. V. Ramakrishnan, vice Chairman.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

### JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *for*
- 2, To be referred to the Reporter or not ? *no*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *no*

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Ghogha Amarsinh  
Running Room Bearor,  
Western Railway,  
Loco Shed,  
Hapa.

..... Applicant.

(Advocate: Mr. K.K. Shah)

versus

1. Union of India,  
Notice to be served through  
The General Manager,  
Western Railway,  
Churchgate, Bombay -20.
2. Divisional Railway Manager(E)  
Western Railway,  
Kothi Compound,  
Rajkot.
3. Assistant Mechanical Engineer(L)  
Western Railway,  
Rajkot.

..... Respondents

(Advocate: Mr. B.R. Kyada)

ORAL ORDER

O.A.No. 262/1988  
with  
M.A.No. 377/1997

Date: 14.10.1997

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The applicant, an employee in the Railways  
has prayed for the following reliefs;

"A. This Hon'ble Tribunal may be pleased to  
direct the respondent to continue the  
applicant as Carpenter anywhere in Rajkot  
Division in the grade of Rs.260-400 by  
treating the period from reversion as  
continue and if any reversion order produce  
by the respondent during the pendency of the  
application be quashed and set aside, holding  
it arbitrary, illegal, unjust and violative

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- of provision of Constitution of India and direct the respondent to give all the consequential benefits to the applicant;
- B. This Hon'ble Tribunal be pleased to allow this petition with cost;
- C. Any other or further orders or direction as deemed fit by the Tribunal in the interest of justice may be passed."

2. We have heard Mr.K.K.Shah. The railway Administration was earlier represented by Mr. Kyada, who had later resigned. A number of opportunities were given to the respondents to engage their counsel. At one time Mr. Kothari stated that he would be making submission for the respondent but on the last occasion after Mr. K.K.Shah was heard in detail, Mr. Kothari said that he had received no instruction from the Railway Administration. In view of this, we hold that no useful purpose will be served by granting further adjournment in this case which is already more than nine years old. We, therefore, proceed to dispose of the O.A. on the basis of the material on record with the assistance we have received from Mr.K.K. Shah.

3. The applicant was engaged as a Khalasi in 1962. He states that he was trade tested for the post of Carpenter and was appointed as such. He stated that he was promoted as Carpenter after trade test in the year 1981 and was working in the Steam Shed at Hapa. As the Railways were weeding out the steam system, the Steam Shed was closed in 1987 and people who are working in this Shed were redeployed elsewhere particularly in Diesel Shed. So far as the applicant

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was concerned, even though he had performed his duties which carries the revised scale of 950-1500 as Carpenter he was not given the equivalent post on his being shifted to Diesel Shed and he was given pay of khalasi which is in the revised scale 775-1025. according to Mr. K.K. Shah, the reversion was done not on the basis of any formal written communication but on the basis of verbal instruction.

4. From the reply statement, we find that the respondents have taken the plea that the applicant underwent a local trade test for Carpenter and in the place of one Shri Lalji Carpenter who was absenting since 18.2.81 he was allowed to perform the duties of Carpenter and he was not given pay in the scale but only given acting allowance. It is their stand that for regular appointment it is necessary for a further trade test to be successfully negotiated. It is further contended that as the applicant was functioning only on adhoc basis, he had no automatic right to continue at the same level when the Steam Shed was closed. The Railways further state that there is no post of Carpenter against which the applicant could have been accommodated.

5. Mr. K.K. Shah for the applicant rebuts these contentions. He states that the applicant was regularly trade tested and there is no difference between the so called local trade test and any other trade test. In this connection he relies on the decision of this Tribunal in O.A.No.251/88 decided

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on 17.7.90 in the case of Hiralal Manabhai and Ors. V/s. D.R.M. Rajkot. He submits that in that case the Tribunal had clearly held that a local trade test has to be regarded as the requisite trade test. Mr. Shah also does not agree that the applicant was only given acting allowance and did not get his pay fixed in the regular scale as Carpenter. He says that the Railways themselves have admitted that he functions on adhoc basis and therefore, he was entitled to fixation of pay in the scale of Carpenter. He draws attention to Railway's own order dated 23.2.83 as at Annexure R-2 enclosed with the reply statement where the applicant's pay has been clearly shown at Rs. 260 in the pre revised scale of Rs. 260-400 and this letter also says that he has been working as such from 1.6.79. Mr. Shah says that the contention of the Railways that his pay was not fixed as Carpenter but he was granted only an acting allowance is contradicted by their own communication. He draws attention to the representation of the applicant dated 27.10.1987 where he has clearly brought out that at the time of reversion, he was drawing basic pay Rs. 1090 in the corresponding revised scale to that of 260-400. Mr. Shah further submits that all other employees working in the Steam Shed which was closed were accommodated in equivalent posts and the Railways chose to discriminate only against the applicant. It is also his contention that there are posts of Carpenter available in the Division and in this connection, he draws attention to the letter

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from the Office of the Executive Engineer Jamnagar dated 26.9.88 where the posts of Carpenter are shown to be available at Rajkot and Jamnagar. Mr. Shah further states that the persons who are continued as Carpenter in this station were not regular employees but only the casual labourers who had acquired temporary status. Mr. Shah says that the action of the Railways goes against the relevant provisions of the I.D. Act and is also arbitrary.

6. The submissions of Mr. K.K. Shah based on the materials which are available in the O.A. have force. These remain unrebutted by the respondents. Mr. Shah further states that the applicant would be satisfied if he is restored to the scale of Carpenter and does not seek any promotion as he is due for superannuation within a year.


7. In the facts and circumstances of the case and in the light of the position as brought out by Mr. K.K. Shah, we hold that the applicant is entitled to the relief sought for. We direct the respondents to treat the applicant as if he was a Carpenter in the pre-revised scale of 260-400 and in the corresponding revised scale of 950-1500 and grant him whatever financial benefits are available on the basis of such a position with effect from 9.10.87 which is <sup>stated</sup> ~~still~~ to be the date of verbal reversion. The respondents are at liberty to utilise the services of the applicant as Carpenter in any station


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in Rajkot Division. They shall carry out the above direction within three months from the date of the receipt of a copy of this order.

8. With the above direction the O.A. is finally disposed of. No order as to costs.

M.A.377/97 ~~is~~ also stands disposed of.

  
(T.N. Bhat)  
Member (J)

  
(V. Ramakrishnan)  
Vice Chairman

vtc.