

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH****O.A. NO.** 738 OF 1988**TAX NO.****DATE OF DECISION** 22nd September, 1994.Shri Kanaiyalal Girdharlal Shah **Petitioner**Mr. K.S. Zaveri**Advocate for the Petitioner (s)****Versus**Union of India & Others**Respondent**Mr. N.S. Shevde**Advocate for the Respondent (s)****CORAM****The Hon'ble Mr. K. Ramamoorthy, Member (A).****The Hon'ble Mr. Dr. R.K. Saxena, Member (J).****JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
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 ?

N

Shri Kanaiyalal Girdharlal Shah,  
Electrical Chargeman (Diesel),  
Under Loco Forman,  
Loco Shed, Vadodara-390 004.

..... Applicant

(Advocate : Mr. K.S.Zaveri)

Versus

1. Union of India,  
Through General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Divisional Railway Manager,  
Divisional Office,  
Western Railway,  
Pratapnagar,  
Vadodara - 4.
3. Divisional Railway Manager,  
Divisional Office,  
Western Railway,  
Ratlam,  
Madhya Pradesh.
4. Divisional Mechanical Engineer,  
(Loco)  
Divisional Office,  
Western Railway,  
Pratapnagar,  
Vadodara - 4.
5. Sr. Divl. Mechanical Engineer,  
(Diesel)  
Western Railway,  
Diesel Shed,  
Vatva - 382 443.
6. Loco Forman,  
Loco Shed, Western Railway,  
Near Navayard,  
Vadodara - 390 004.
7. Shri Suresh Swaroop K. Saxena  
Electrical Chargeman (Diesel),  
Under Sr. Divl. Mech. Engineer,  
Diesel Shed,  
Ratlam,  
Madhya Pradesh.
8. Shri Pradipkumar Baradia,  
Electrical Chargeman (Diesel),  
Under Sr. Divl. Mech. Engineer,  
Diesel Shed, Ratlam,  
Madhya Pradesh.

9. Shri Namichand Daularam Kumavat,  
Under Sr. Divl. Mech. Engineer,  
Diesel Shed, Western Railway,  
Vatva - 332 443.

..... Respondents

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A. NO. 738 OF 1938

Date : 22.09.1994.

Per : Hon'ble Mr. K. Ramamoorthy, Member (A).

The applicant has sought earlier date of seniority to be given to him on his promotion as Electrical Chargeman. The applicant was employed by the Railways in its Electrical Department originally as Electrical Cleamer and was transferred in 1973 as Electrical Fitter Gr. III. The applicant was promoted by an order dated 9-5-1974 to the post of Electrical Fitter (Highly Skilled) in the scale of Rs.330-430(R) which order was delivered to the applicant on 7-3-1975 and he was asked to proceed to Ratlam. However, he submitted that he was not in a position to go to Ratlam and he refused his promotion on 7-3-1975. The applicant concedes that because of his refusal, his promotion could be withheld for a period of one year i.e. upto 7-3-1976. The applicant also states that thereafter he was promoted to the post of HS/ELF. Gr.II on 24-3-1976. Even after receipt of this order, the applicant admits that since the present order also meant transfer to Ratlam and he was not given promotion at Kankaria.

he requested that "as he was not in a position to accept the promotion at Ratlam and if there was no chance to get promotion at Kankaria he had requested the authority to transfer him to open line". The applicant finally came to be promoted by an order dated 31-3-1973 with effect from 4-3-1977. The applicant has made the point that further promotions were thereby delayed and the applicant was promoted to the post of Electrical Chargeman only on 26-7-1988 though his juniors had got promoted in the year 1981. On this ground, therefore, the applicant has also sought relief that he should be promoted as Electrical Chargeman with effect from 1981.

2. It is very clear from the narration of the facts of the case as above that the issue hinges on the date from which he should be treated as having been promoted to the grade of HS/ELF Gr.II. He has admitted that he had formally refused the promotion in 1974 since it meant transfer to Ratlam and he concedes that his promotion could be withheld upto 7-3-1976. He also admits that he had again turned down his promotion order in 1976 since in this case also, it meant his having to go out of Ahmedabad to Ratlam. The basic issue for consideration for this Tribunal is therefore, the question as to whether his letter of 6/13-9-1976 (A-IV) should also be considered as a formal letter of refusal. On going through the letter, this Tribunal has no doubt in its mind that it is a formal rejection letter. The following two paras of this letter makes it very clear:

"This promotion I had to forfeit on account of my family circumstances. In light of this, it is but natural that on completion of my period of forfeiture as per rules in force, I would be again transferred to RTM as HS/ELF.

Since for the reasons mentioned above and explained in person, I am not at all in a position to accept my promotion at RTM and at the same time as there is no hope of my getting promotion in Diesel Shed, KKF, I request your Honour to kindly transfer me back to the open line."

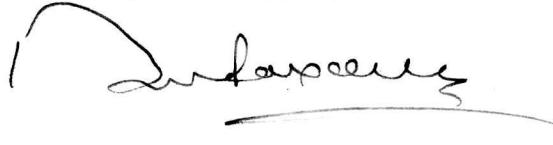
Another point urged before this Tribunal was that vide exh. A-XI, it could be seen that no order of formal promotion was given to him. We have gone through this letter at A-XI. It is an inter-office correspondence from DME (DL), KKF to DRM (E), RTM. This inter-office correspondence merely records the fact that subsequent to a telephonic conversion the formal orders were not issued which may as well be due to the fact that the applicant formally refused the promotion as stated earlier. In any case, even though the formal promotion was ordered in 1988 because of the representation made by the applicant, the respondents themselves have agreed that the applicant be given seniority position ELF Gr.II with effect from 4-3-1977 vide Annexure XIV which is in order since the applicant had refused promotion in 1976 and the one year ban will naturally apply to him. We, therefore, see no irregularity or illegality in the Railways fixing the seniority position in ELF Gr.II from 4-3-1977 as this Tribunal also is of the view that the earlier letter dated 13th

September, 1976 is clearly a letter of refusal by the applicant for promotion.

3. The consequential delays in promotion due to fixation of seniority is an essential incidence of service which has been brought on himself by the applicant alone ~~if~~ because of his refusal of promotion twice.

4. In the application, a reference has been made that the officiation of the applicant in leave vacancy should also be considered for the purpose of his seniority. This is a different point. The main issue in this application is basically the question of fixation of seniority of the applicant in his grade as HS/ELF Gr.II. So far as this issue is concerned, the Tribunal is of the opinion that there has been no error committed by the respondents in giving a delayed date of promotion in view of the applicant's own request.

5. Hence the application is dismissed. No order as to costs.

  
(Dr. R.K. Saxena)  
Member (J)

  
(K. Ramamoorthy)  
Member (A)