

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD.

RA/MA/ODA/T/1991 1991.

Ganesh Pansad Verma Applicant(s).

Versus

K. K. Shah Adv. for the
H.S. Chaudhary Petitioner(s)C. O. T. & Ors.Respondent (s)R. M. VermaAdv. for the
Respondent (s)

SR.NO.	DATE	ORDERS
	14/6/91	promotion/Reversion. (Copy served) FIA.
217		PL issue notice of P.A to reps. pending admission to 2990
15/7/91		RPAO Recd. from Resps. 1 & 2 with off 1957 to 1991
18/7/		RPAO Recd. from Resps. 2 to 1991
30/7		PL issue notice of P.A to 2990 pending admission to 2990
12-8-91.		None present - Notice to resp. no. 2 is served on 11-7-91. No reply filed by resp. no. 2 Notice to resp. no. 1 is issued on 5-7-91 but RPAO off is not on record; presumption of service to resp. no. 1 can be raised on 5-8-91. Hence for his reply adjourn to 5-9-91.
		<i>J. Ganesh</i> Decided on 3/9/91 H.C Reg.

SR.NO.	DATE	ORDERS
	11/9/91	None present & Reply not filed by Regd no 142. matter be placed for appropriate order Jen/np. 16 Regds
	13/12/91	Reply filed by Shri R.M. Vin adv. for respondents.
	18/5/92 F/A	
	6/7	REJOINDER FILED by Shri K.K. Shah on dtd. 3/7/92 Adv for APPD.
		A. Valu not after add to Regd 8 3/7
	10/7	Notice served on Respondent
	19/7	Notice served on Respondent & kept with office
	21/7/92	Honble V.C. on leave.
	18/02/98	Date informed for final hearing to Mr K.K. Shah (adv) & Mr R.M. Vin (adv.)
	11/3	Rejoinder for Adv. R.M. Vin kept in adv/18/91
	16/4/98	Notice returned from Regd no 02 -
	14/2/91	
	REC/-	

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O.A./199/91

Date	Office Report	ORDER
14.6.1991	Notice issued on 5.7.91 and served to Resp. No. 2 Saw 22/7/91.	Present : Mr. K.K. Shah, learned advocate for the applicant. Mr. R.M. Vin, learned advocate for the respondents. Heard the counsel for the applicant and the respondents. Pending admission. Issue notice on respondents on admission and on merits to be replied within 30 days.. The applicant may file rejoinder if any thereafter. Both the cases be heard together on 24th July, 1991.
24.7.1991	Resp. Submitted. Reply/ rejoinder has not been filed as per this order R. C. Bhatt 23/7/91 S.O.	AIT Present : Mr. K.K. Shah, learned counsel for the applicant None for the respondents. According to the office report, notice has been issued to respondent on 5.7.1991. The matter may be listed for admission hearing after reply of respondents on merits and applicants rejoinder. The matter may be finally heard on that day, also. R. C. Bhatt 23/7/91 S.O. *Mogera

Date	Office Report
25.9.91	<p>Present: Mr. K.K.Shah, learned advocate for the applicant.</p> <p>None for the respondents.</p> <p>...</p> <p><u>ORDER</u></p> <p>Mr. K.K.Shah, learned advocate for the applicant wants to produce before this Tribunal dated 10.1.1989 which has been referred to in OA/178/90 decided on 27.6.1990 at a copy of which is produced at Annexure A/4. The respondent has not filed reply. Adjourned to 3.10.1991.</p> <p><i>Raval</i> (R.C.Bhatt) Member (J)</p> <p><i>P.S.Habeeb</i> (P.S.Habeeb Mohammed) Member (A)</p>
3.10.1991	<p>a.a.b.</p> <p>Present : Mr. K.K.Shah, learned advocate for the applicant.</p> <p>Mr. R.M.Vin, learned advocate for the respondents.</p> <p>Mr. K.K.Shah, learned advocate for the applicant prays for time for two weeks, to which Mr. R.M.Vin, learned advocate for the respondents has no objection. Hence adjourned to 16th October, 1991.</p> <p><i>Raval</i> (R.C.Bhatt) Member (J)</p> <p><i>P.S.Habeeb</i> (P.S.Habeeb Mohammed) Member (A)</p>
	AIT

O.A./199/91

Date	Office Report	Order
20.11.91		<p>Learned advocate Mr.K.K.Shah, for the applicant prays for four weeks time to produce before us the order dated 10th Jan, 1989, which has been referred to in O.A./178/90, dated 27th June, 1990. Learned advocate Mr.R.M. Vin, for the respondents also requests for four weeks time to file reply. Time granted. The matter be listed after four weeks.</p>
		<p><i>RP</i></p>
		<p>(S.Gurusankaran) Member (A)</p>
		<p><i>RP</i></p>
		<p>(R.C.Bhatt) Member (J)</p>
		<p>AIT</p>
18.6.92		<p>K.K. Shah learned counsel for the applicant stated that he has filed rejoinder today. The matter may be listed for admission after two weeks.</p>
		<p><i>RP</i></p>
		<p>(R.C. Bhatt) Member (J)</p>
		<p><i>BBM</i></p>
		<p>(B.B. Mahajan) Member (A)</p>
		<p>*K</p>

Date	Office Report	ORDER
(1) 23.7.92.	Present: Mr. K.K. Shah, Adv/Apt. Mr. R.M. Vin, Adv/Res.	Heard. Application is admitted. The pleadings are complete. Hence list for final hearing on 21st September, 1992. <i>Neel</i> (R.C. Bhatt) Member (J)
12.11.92 (24) F.H.	For want of time, the matter is adjourned. Registry to give the date of next hearing. <i>Neel</i> (R.C. Bhatt) Member (J)	<i>Ch</i> (N.V. Krishnan) Vice Chairman <i>V</i> (N.V. Krishnan) Vice Chairman
12.3.98	<p>Notice issued to concerned Advocates</p> <p>on - 25-2-98.</p> <p>Place for F.H. on - 12-3-98: S.R. 22 ad done</p> <p><i>Mr 11/3/98</i></p>	<p>*K</p> <p>MR. K.K. Shah has filed a sick note. Adjourned to 30.3.1998.</p> <p><i>M</i></p> <p>(V.Ramakrishnan) vice Chairman</p> <p>vtc.</p>

Date	Office Report	O R D E R
30.3.98	RECEIVED Mr. K.K. Shah has filed sick note.	Mr. Chaudhary not present. Adjourned to 28.4.1998.
28.4.98	(Constituted by Mr. P.C. Kannan and Mr. V.Ramakrishnan)	Mr. Shah is sick. Mr. Chaudhary is not present. Adjourned to 14.5.98.
14.05.98	(Constituted by Mr. P.C. Kannan and Mr. V.Ramakrishnan)	Mr. K.K. Shah is sick. Mr. Vin has filed a leave note. Adjourned to 03.07.98.
03.07.98	(Constituted by Mr. P.C. Kannan and Mr. V.Ramakrishnan)	At the request of Mr. K.K. Shah, adjourned to 27.07.98.

DATE Office Report.

O R D E R

27.7.98

At the request of Mr. Vin,
adjourned to 13.8.1998.

*DR**VR*(P.C. Kannan)
Member (J)(V.Ramakrishnan)
Vice Chairman

vtc.

13/8/98

Mr. Shah is ill. Adjourned to 01/9/98.

*DR**VR*(P.C. KANNAN)
MEMBER (J)(V.RAMAKRISHNAN)
VICE CHAIRMAN

*SSN

1.9.98

Mr. Vin is not present. Mr. K.K. Shah
present. Adjourned to 8.9.1998.

*DR**VR*(Laxman Jha)
Member (J)(V.Ramakris
Vice Chairman

vtc.

08.09.98

Mr. K.K. Shah has filed a sick
note. Adjourned to 16.09.98.

*DR**VR*(P.C. Kannan)
Member (J)(V.Ramakrishnan)
Vice Chairman

mb

16.09.98

Mr. K.K. Shah has filed a sick note.

Adjourned to 15.10.98.

DR
(Laxman Jha)
Member (J)(V. Ramakrishnan)
Vice Chairman

hki

DATE Officer Report.

ORDER

15.10.98

None for the parties now. Adjourned

to 19.11.98.

DR
(P.C. Kannan)
Member (J)

MR
(V. Ramakrishnan)
Vice Chairman

19.11.98

Mr. K.K. Shah says that he is ready.

Mr. Vin is not present now. Adjourned to
18.12.98.

DR
(P.C. Kannan)
Member (J)

MR
(V. Ramakrishnan)
Vice Chairman

hki

There is a leave note from Mr. Vin.

Mr. K.K. Shah absent. Adjourned to

07.01.99.

MR
(V. Ramakrishnan)
Vice Chairman

07.01.99

Mr. K.K. Shah present. Mr.

Mr. Vin was present earlier but not now.

Adjourned to 05.02.99.

DR
(P.C. Kannan)
Member (J)

MR
(V. Ramakrishnan)
Vice Chairman

hki

Mr. K.K. Shah has taken leave, which

is permitted. Adjourned to 18.03.99.

DR
(P.C. Kannan)
Member (J)

MR
(V. Ramakrishnan)
Vice Chairman

mb

O R D E R

DATE	OFFICE REPORT	ORDER
18.3.99		<p>Reply has not been filed.</p> <p>Mr. Vin was present earlier but not now not now. Adjourned to 9.4.99.</p> <p><i>PN</i></p> <p>(P.C. Kannan) Member (J)</p>
		<p><i>VR</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
09.04.99		<p>nsh</p> <p>Reply has already been filed. Mr. Vin prays for is an adjournment stating that he was not well.</p> <p>Adjourned to 10.05.99.</p> <p><i>AS</i></p> <p>(A.S. Sanghavi) Member (J)</p>
		<p><i>VR</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
13.5.99		<p>Mr. Vin not present. Adjourned to 22.6.99.</p> <p><i>PN</i></p> <p>(P.C. Kannan) Member (J)</p>
		<p><i>VR</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
22.6.99		<p>nsh</p> <p>Mr. Vin not present. This is a 1991 matter.</p> <p>Adjourned to 24.6.1999.</p> <p><i>AS</i></p> <p>(A.S. Sanghavi) Member (J)</p>
		<p><i>VR</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
24.6.99		<p>vtc.</p> <p>At the request of Mr. K.K. Shah, adjourned to 5.7.99. Mr. Vin produces Departmental files which is kept in the custody of Court Officer.</p> <p><i>AS</i></p> <p>(A.S. Sanghavi) Member (J)</p>
		<p><i>VR</i></p> <p>(V. Ramakrishnan) Vice Chairman</p>
		<p>vtc.</p>

O R D E R

DATE	OFFICE REPORT	ORDER
05.07.99	<p>Mr. K.K. Shah absent. It is a 1991 matter which is also part-heard. Adjourned as a last chance, to 07.07.99.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>mb</p>	<p>Mr. K.K. Shah absent. It is a 1991 matter which is also part-heard. Adjourned as a last chance, to 07.07.99.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>mb</p>
7.7.99	<p>Adjourned to 5.8.99.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>nsh</p>	<p>Adjourned to 5.8.99.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>nsh</p>
5.8.99	<p>Heard both sides. Oral order dictated in the open Court.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>	<p>Heard both sides. Oral order dictated in the open Court.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>
	<p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>	<p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>
	<p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>	<p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A. 199/1991

Ahmedabad this the 5th day of August, 1999.

**Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghavi, Judicial Member**

Ganesh Prashad
S/o Shri Ajmerilal Verma
Senior Commercial Inspector,
Under Divisional Railway Manager
Bhavnagar Para
Resident of Rly. Bunglow No.T/29
Railway Colony,
Gondal (Gujarat)

Applicant

By Advocate : Mr. K.K. Shah

VERSUS

1. Union of India, through
The General Manager,
Western Railway,
Churchgate, Bombay – 20.
2. The Divisional Railway Manager
Western Railway,
Bhavnagar Para Division
Bhavnagar Para (Gujarat)

Respondents.

By Advocate: Mr. R.M. Vin

ORDER (Oral)

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

We have heard Mr. K.K. Shah for the applicant and Mr. Vin for the respondents.

2. This is the second round of litigation. The applicant who was working as commercial inspector in the pre revised scale 550-700 is aggrieved by the stand of the Railway Administration in not giving him promotion to the next higher grade of 700-900 corresponding to the revised scale of 2000-3200 with effect from 31.7.85.

3. Mr.K.K.Shah for the applicant submits that consequent to the restructuring orders issued by the Railway Administration by letter dated 16.11.87, a number of posts at the level of 550-750 got upgraded to 700-900. So far as the Bhavnagar Division is concerned, he draws attention to the letter dated 31.7.85 as at Annexure A-1, where the applicant who figures at Sr.No.70 has been promoted to the level of 700-900 with effect from the date of taking over charge. Mr.Shah brings out that the applicant was accommodated against the vacancy which was vacated by one Shri Mr. Saini, who is at Sr.No.25, who retired from 31.5.1984. Some proceedings were initiated against the applicant and a memorandum of charge for a major penalty was served on him under Railway Servants (Discipline & Appeal) Rules on 14.6.85. He was placed under suspension for the period from 5.11.85 to 23.11.85. He had earlier approached the Tribunal in OA 178/90 bringing out that two of his representations where he had asked for promotion were still pending. The Tribunal by its order dated 27.6.90 directed the DRM Bhavnagar to dispose of the representations through a speaking order. A copy of the Tribunal's order is at Annexure A-4. In compliance with the Tribunal's direction DRM Bhavnagar has issued a speaking order dated

22.8.90, copy at Annexure A-5. He has stated therein that the suspension period of the applicant was treated as duty as he was exonerated by the authority. DRM had noted that the applicant's seniority had already been fixed below Shri J.P. Sankal and above Shri Kalooram by Headquarter letter dated 4.5.87 as requested by the applicant. So far as the date of promotion is concerned, he held that even if the applicant had not been proceeded against he would have been appointed only from 16.9.85 which is the date on which the orders were implemented in Bhavnagar division when his seniors have been promoted. He held that there was no question of payment of arrears with effect from 1.1.84 as claimed. We find from the relevant annexures that the applicant in his representation dated 8.2.89 & 13.2.89 had asked for arrears of the upgraded post with effect from 31.7.85.

4. Mr.K.K.Shah further submits that in terms of the restructuring order the post which was held by Shri Saini was upgraded with effect from 1.1.84 and the applicant had been posted soon after ~~his~~ retirement with effect from 1.6.84. In any case the orders of the Railway Administration is dated 31.7.85 where he has been clearly given promotion to the higher level and has been shown against the vacancy which arose on the retirement of Shri Sainee. Mr. Shah contends that in fact ^{he} had functioned at the higher level and the applicant should be granted arrears. He further says that when the seniors were promoted on 16.9.85 and the applicant was exonerated in the ~~proceeding~~ ^{pleadings} and had been holding the post the respondents order dated 30.8.90/6.9.90 as at Annexure A-7 which denies the payment of arrears from up to 5.5.88 is unjustified. Mr. Shah submits that the applicant was exonerated and was actually holding the post except for the suspension period which was later

on treated as duty as is clear from the letter and at least from that date the applicant would be entitled for the financial arrears.

5. Mr. Vin for the respondents contends that as there were disciplinary proceedings pending against the applicant, he could not be given the actual financial arrears. He says that the subsequent order of the DRM was issued where it has been clearly brought out that the applicant has been given promotion from 16.9.85 when his immediate senior was promoted. To a query as to why the applicant should be deprived of the actual financial arrears when he was admittedly holding the post and when the disciplinary proceedings had been concluded and he had been exonerated and the suspension period has been treated as duty, he says that a decision in this connection was taken after conclusion of the disciplinary proceedings.

6. As is clear from the applicant's representation his claim was that he should be given actual promotion with the financial benefits from 31.7.85 which is the date of the Railway Board's letter. However, we find that the Railway Board's letter talks of promotion from the date of taking over charge. It is brought out in the letter dated 30.8.90 as at Annexure A-7 that the applicant has in fact received promotion to the pre revised scale 700-900 with effect from 16.9.85 and his pay was fixed in the pre revised scale and he was given one increment in the revised scale on 1.1.86. There was however an endorsement that he is eligible for payment of arrears with effect from 5.5.88 which is stated to be the actual date of promotion. We take note of the fact that the disciplinary proceedings ended with exoneration of the applicant as the DRM in his letter dated 22.8.90 has clearly brought out in para 2 that he has been exonerated of the charges and the suspension has

been treated as period spent on duty. The DRM letter in para 3 has stated as follows:

“Shri Verma, had he not been facing major penalty proceedings against him, would have been promoted only from 16.9.85 the date on which CCS's orders were implemented on BVP Division, when his seniors have been promoted from this date only. I, therefore, see no reason why he should be given proforma fixation from 31.7.85. He has already been given the benefit of fixation from 16.9.85.”

This gives the impression that he has been given not only the benefit of promotion but has also been given actual fixation of pay from 16.9.85 which is actually not the case. While there is some justification for the Railway fixing the date of 16.9.85 as it was the date on which the senior was promoted, we hold that the action of the Railway in denying arrears up to 5.5.88 cannot be sustained.

7. In the light of the facts and circumstances of the case we direct the Railway Administration to make available the arrears for the period from 16.9.85 on which date the applicant had received proforma promotion till 5.5.88. In order to facilitate ^{the} implementation we quash that part of letter dated 6.9.90 as at Annexure A-7 which says that he is eligible for arrears only from 5.5.88. The respondents shall ensure payment of arrears to the applicant within two months from the date of receipt of a copy of this order.

8. Mr. K.K. Shah at this stage submits that even though the DRM has passed the order treating the period of suspension as duty, the applicant has not received full pay but this is not the issue in this OA.

9. With the above direction, the OA is disposed of. No order as to costs.

Arco

(A.S. Sanghavi)
Member(J)

President

(V.Ramakrishnan)
Vice Chairman

Vtc.