

## CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH, DELHI~~

Ahmedabad Bench, Ahmedabad

O.A No.  
~~XXXXX~~

146 of

1989.

DATE OF DECISION 5.3.1991

Shri K.V. Mehta

Petitioner

Shri J.J. Yajnik

Advocate for the Petitioner (s)

Versus

Union of India &amp; Ors

Respondent

Shri B.R. Kyada

Advocate for the Respondent(s)

## CORAM .

The Hon'ble Mr. P.H. Trivedi .. .. Vice Chairman

The Hon'ble Mr. R.C. Bhatt .. .. Judicial Member

JUDGMENT

(6)

Shri K.V. Mehta,  
C/o. P.V. Mehta,  
A-10, Ten Bunglows,  
Behind Politechnic,  
Ahmedabad-380015.  
(Advocate-Mr. J.J. Yajnik)

.. Applicant

Versus

1. Union of India,  
Through, Secretary,  
Ministry of Railways,  
Rail Bhavan,  
New Delhi.
2. The General Manager,  
W.Rly., Churchgate,  
Bombay.
3. Divisional Railway Manager,  
W.Rly., Kothi Compound,  
Rajkot.  
(Advocate-Mr. B.R. Kyada)

.. Respondents

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. R.C. Bhatt .. Judicial Member

O.A. No. 146 of 1989

O R D E R

Dated : 5.3.1991

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Heard Mr. J.J. Yajnik and Mr. B.R. Kyada, learned advocates for the petitioner and respondents respectively. This Tribunal had earlier considered the merits of the petitioner's case regarding his appeal to the Medical Board in T.A./500/86 and directed on 27.4.1988 that "the petitioner claims that he has academic qualifications of B.A. B.Ed. with P.T.C. and he is competent to perform duties in which his present medical handicap may not be a bar. For this reason, he wishes to be examined by competent medical board and appropriately de-categorised

and offered a job for which he is regarded as fit. His representation in this regard according to him have not been considered. It is directed that if he files a representation within 15 days it be considered and he be examined by competent medical board and if found fit for other employment be offered the same. If he has any grievance left, he is a liberty to pursue it thereafter." Accordingly, the petitioner was examined by the Medical Board and accordingly order dt. 8.7.1988 (Ann. A-3) was passed in which it is stated that " As per CAT ADI direction in his case T.A. No. 500/86 in SCA No. 5259/85 decided on 27.4.1988 Shri K.V. Mehta was examined by Medical Board at Rajkot on 15.6.1988 to decide his fitness for other job/post and it was decided that he is fit for the job/post of Announcer/Telephone Operator/ Canman etc. which has been approved vide CMD CCG's letter No. MD/164/3/4/7 dt. 23.6.88. In view of the above said facts, Shri K.V. Mehta, Ex. Rly School Teacher is alternatively absorbed as Announcer on pay as 1500/- per month in scale Rs. 950-1500 (RP) and posted at MSH under SS MSH. The intervening period from 14.8.85 to date he joins as Announcer at MSH is treated as leave due to him and qualifying period for the purpose of his pay fixation as Announcer scale Rs. 950-1500 (RP) in which category and grade he is alternatively absorbed." The petitioner, accordingly joined as Announcer at Mehsana.

2. In the present case, the petitioner has sought to rely upon his fitness to continue as Primary Teacher on the ground that according to the instruction of Ministry of Personnel, Public Grievance & Pension,

reproduced at Annexure A-12 dt. 1st April, 1986, the post of a primary teacher is included among the administrative jobs in group C and D; that the post of Announcer admittedly carries lower pay scale than that of the post of Primary Teacher; that in their reply, the respondents have only stated ~~that~~ how the petitioner cannot be absorbed as a Music Teacher or as a Secondary Teacher; that the petitioner should have been sent for the Medical Board as a result of his representation, but no reply was given to him although the representation was filed on 1st October, 1986 and accordingly dealt with for which the petitioner has now to suffer adverse consequences <sup>>QUDAO</sup> for the period 14.8.1985 to 14.7.1988, the petitioner should be allowed his back wages; that the petitioner claims that the obligation to find an alternative appointment suitable to the petitioner was, on the respondents and that for the period for which the petitioner was not given appointment, the petitioner has a right of remaining on leave if such leave was available to him but otherwise the petitioner was entitled for the fault of the respondents to claim wages if the petitioner was denied an alternative appointment beyond the period of such a leave. The petitioner and the respondents both have relied upon the <sup>of REM</sup> Rules 2604, 2607, 2609 and 2610 for their rival contentions.

3. The respondents have repelled the above contentions on the ground that the petitioner has failed to point out any right of appeal against the Medical Officer's order. During the hearing, learned advocate for the petitioner was invited to point out specific provision for such appeal. Learned advocate

pointed out Rule 15.1.1 at page 547 of M.L. Jand Railways' Establishment Manual which reads as follow :

"15.1.1. Ordinarily, there is no right of appeal from the findings of an examining medical authority, but if Government are satisfied on the evidence produced before them by the candidate concerned of the possibility of an error of judgment in the decision of the examining medical authority, it will be open to them to allow re-examination. Such evidence should be submitted within one month of the date of the communication in which the decision of the first medical authority is communicated to the candidate; otherwise, ordinarily, no request for an appeal for a second medical examination will be considered."

In terms these rules state~~s~~ that there is no right of appeal and that ~~if~~ any further reference has to be made by satisfying the Government on evidence produced before them<sup>that</sup> there is a possibility of an error of judgment on the part of Medical authority. No evidence is placed before us showing that the petitioner at any time attempted beyond some representation that there is any error in the judgment in this regard and it was conceded during the hearing that there was no right of statutory appeal against the decision of the medical officer and admittedly it was a matter of discretion on the part of the Government. There is not much point in discussing this aspect of the matter because the Tribunal had asked the medical board to look into the question of representation made by the petitioner and the Medical Board has so done as a result of representation of the petitioner consequent upon its direction in

4. The first question is whether the petitioner has a right to be appointed to the post of Primary Teacher. Learned advocate for the petitioner stated that he suffers in terms of emolument because the Announcer's post carries a lower pay scale and also while the Announcer is retired at the age of 58 years and the Teacher is retired at the age of 60 years. The relevant rules in this regard require the authorities to give alternative appointment in terms of the emoluments being as ~~nearby~~ <sup>nearby</sup> equal to the emoluments of the post for which the petitioner is not considered suitable. In sub rule (3) of rule 2609, the level of emoluments considered suitable has also been defined. Although the level of emoluments of Announcer are below the scale prescribed under this sub rule, we have also to refer to the same sub rule stating that "the figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merit". On the ground therefore, of the scale of emoluments being less, the decision of the respondents cannot be regarded as untenable.

5. The contention of the petitioner is that his case for Primary Teacher has not been considered by the respondent authorities and that the Medical Board has not addressed ~~the difference~~ <sup>itself</sup> to the question of his suitability ~~as~~ for the Primary Teacher. We do not find much weight in this plea. We have to take into account the ~~consequence~~ and the ~~contested~~ <sup>Conclusion of</sup> various authorities competent to decide <sup>the suitability of</sup> the petitioner for the post of Primary Teacher. The Medical Officer has admittedly found the petitioner unfit to hold the post of Primary Teacher. The respondent authorities have referred the case to the Medical Board which has

not over-ruled the Medical Officer or disagreed with him. There is no finding that the petitioner could be considered for the post of Primary Teacher. In fact the Medical Board by suggesting alternative post, for which the petitioner is fit as Announcer by ~~unqualification~~  
considering him unfit to hold the post of Teacher.

6. The petitioner himself has in his representation dt. 28.9.1985 referred to Mr. Parmar being appointed as Announcer and cited his case for supporting ~~for~~ considering him for suitable post on the ground of avoiding economic hardships. We, therefore, are not at all ~~pursued~~ <sup>added</sup> that the petitioner after being referred to the Medical Board and <sup>after</sup> being offered an appointment in a suitable alternative post and which he has by representation and by his action in joining <sup>in</sup> to such a post can any longer support his contention that another post which he was already holding and ~~from~~ which he was considered unsuitable should still be considered for him.

7. There is another relief to which the petitioner <sup>and that</sup> has laid his claim, is regarding back wages for the period from 14.8.1985 to 14.7.1988. The petitioner already has been offered in the order earlier referred to dt. 8.7.1988 that such a period could be adjusted as leave due. In the reply, it is stated that the petitioner was not entitled to any ~~leave~~ due, in such a case the period has to be adjusted upto maximum of six months as Extra ordinary leave which is laid down under Rule 2604 as follows :

"Rule-2604 : If an alternative employment cannot be found for such a person within

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the period of leave so granted his service should be extended by grant of extraordinary leave, subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months."

The respondents have already dealt with the case in terms of this rule so far as the admissibility of leave and extraordinary leave are concerned. It would however bear reiteration that petitioner should be considered for such period as extraordinary leave if there is any further scope for it.

8. The petitioner has not pointed out any other support for claiming back wages. As we have stated earlier because there is no right of statutory appeal and because the respondents have not been found guilty of any default for considering the case of the petitioner in regard to the Medical Board there can be no claim for back wages for the petitioner on that ground.

Accordingly, we find the petition to have no merits. There shall be no order as to costs.

*Neeraj*  
( R C Bhatt )  
Judicial Member

*Prady*  
( P H Trivedi )  
Vice Chairman