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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEW DELHI

O.A. No. 250/ 1989
TAX NO. with
O.A. / 458/86

DATE OF DECISION 28/11/91

Shri Bachubhai Bapalal Barot Petitioner

Party in person Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. J.P.Sharma; Judicial Member

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W.P.Padwa

Shri Bachubhai Bapalal Barot, (P in P),
Guard, Mehsana Station,
Railway Karkoon Chali,
Nr.Krishna Cinema,
Mehsana (H.G.) - 334 001.

... Applicant.

Vs.

(1) Union of India through,
The General Manager,
Western Railway,
Churchgate,
BOMBAY.

(2) The Divisional Railway Manager,
Rajkot Division,
Western Railway,
Kothi Compound,
RAJKOT.

... Respondents.

(Advocate : Mr.B.R.Kyada)

JUDGMENT

O.A. No. 250/1939.

with

O.A. No. 458/86

Dated : 28/11/91.

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

In this application under Section 19 of the Administrative Tribunals Act, the petitioner has claimed the relief in terms of a declaration that he be treated to be the holder of the post of HTC from 31-1-1933, and be granted all the consequential benefits. As a result of the judgment dated 19-9-88 in O.A./453/86, a speaking order has been passed dated 20/21-2-1939 communicated to the petitioner which is at Annexure - A/1, (Page-14). In that order ADRM Rajkot after holding that the office memorandum dated 27-3-1934 retiring the petitioner from service had been passed after giving all reasonable facilities and after considering in every possible way the petitioner's case for suitable alternative employment, ^{He} has also held that for the reasons stated in it the petitioner was not

medically qualified to hold any post higher than C/1 category. Therefore, his request for posting him as H.T.C. cannot be accepted. That speaking order has however further ~~has~~ given him one more chance on humanitarian ground for posting as Head Clerk for which a written willingness within a one month was required from the petitioner. The petitioner has challenged this order on the ground that it has been signed by ADRM Rajkot and not by DRM and that the directions at A/3 were in terms of DRM Rajkot's passing speaking order. The other challenge is on the ground of the merits of medical decategorisation in terms of the eye-sight and that they were measuring the standard required for H.T.C's post.



2. The petitioner and the learned advocate for the respondents during the hearing contended themselves with the plea that their respective case is fully set out in the record on the basis of which the Tribunal may give its decision.

3. From the perusal of the record we do not find that there is any infirmity in the speaking order referred to on the ground of competence. It is true that our directions at A/3 had asked for the speaking order to be passed by the DRM, but it is established law that administrative action can be taken ^{in the name of} ~~in the name of~~ ^{in the name of} by any cognate authority and ADRM in passing the said speaking order acted as such and is not incompetent to do so for that reason. From the perusal of the speaking order we do not find that any finding so examined is vitiated on that ground. Personal hearing has been given to the petitioner and the facts of the case and record pertaining thereto as relied upon has been brought out in it.

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4. The other challenge is on the plea of the petitioner being given post of the H.T.C. We find from the record that there is a clear medical finding that the petitioner's case of declassification was seen by the ~~Divisional~~ ^{Class} Medical Officer in very clear terms as seen from the reply R/I and R/II. He therefore, does not qualify for holding the post of H.T.C. which requires medical qualification for it.

5. The petitioner has dwelt at some length

on his reluctant and conditional willingness letter which has been sent by him on 24-3-1989. In that letter he has accepted the offer of the Head Clerk while reserving his right of representation against all the conditions made in the respondent's letter of 20/21-2-1989. The petitioner has however, not

been allowed to join the post because his letter is after the stipulated period of one month. We considered the question whether the petitioner should be allowed any relief regarding respondents being required to extend the period within which his willingness letter was to be sent. We do not find it possible to give him this relief because he has prayed for no such relief in his petition. It is established law that courts should not extend the ambit of the relief from the prayer made with reference thereto. However, considering the facts of the case and the hardship of the petitioner, if he makes a fresh representation to that effect the respondents may not feel constrained by virtue of the strict time limit imposed by them in the referred to speaking order from entertaining the same and give him any suitable appointment from the prospective date, on such terms and conditions if, they feel, are equitable to impose in the circumstances.

6. Subject to the observations we do not find that the petition has any merit and reject the same. There are no orders as to costs.



Sd/-

(J.S.P. Sharma)
Judicial Member

Sd/-

(P.H.Trivedi)
Vice Chairman

Prepared by : P.T.T
28/1/91

Compared by : *Copy*

TRUE COPY 28/1/91,

K.B.Sane 28/1/91

K. B SANE

Section Officer (J)

Central Administrative Tribunal,
Ahmedabad Bench.

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