

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 586 | 1993
T.A. No.

DATE OF DECISION

1-11-1993

Shri Pravinbhai Anandbhai Parmar
Petitioner

Shri D.S. Vagodia

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Shri Akil Kureshi

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel

Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan

Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

Pravinbhai Anandbhai Parmar
 C/o Anandbhai Mulabhai
 Nari Road, Kumbharwada,
 Opposite Fazalbaug
 Bhavnagar.

Applicant

Advocate Shri D.S. Vagodia

Versus

1. Union of India
 Notice to be served
 upon the Ministry of Industry
 Small Industries Services Institute
 New Delhi

2. Deputy Director
 Small Industries Institute
 Harsiddh Chambers, 4th Floor
 Ashram Road, Ahmedabad.

Respondents

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 586 of 1993

Date: 1-11-1993.

Per Hon'ble Shri N.B. Patel

Vice Chairman.

The applicant was working at Bhavnagar as Watchman in the Small Industries Institute and, by the impunged order, he is sought to be transferred to Ettumanur in ~~Kerala~~. After discussion at the bar, on behalf of the applicant it was stated that if the applicant is accommodated somewhere in Gujarat, preferably near Bhavnagar, he will have no grievance. On being asked by us, the respondents have disclosed that, at present,

there is one post of Peon vacant at Ahmedabad Office and there is also one post of Helper vacant at Silvasa Office. The respondents have expressed some difficulty in posting the applicant at Rajkot, where also one post of Watchman is vacant from 1-7-1993, as one Mr. Dave had filed O.A. 161/92 for compassionate appointment and the Tribunal has ordered that the respondents should make a firm offer of appropriate Group D post, within Gujarat, to the said Mr. Dave further observing that, if there is no vacant post, the said applicant Mr. Dave should be deemed to have been appointed as Watchman at Rajkot and then retrenched and on this footing his name should be reported to surplus cell. The respondents feel that, by virtue of this order, they are required to appoint Mr. Dave against the post of Watchman at Rajkot. However, on reading the order as a whole, it is very clear that the respondents are directed to make firm offer of appointment to Mr. Dave on any Group D post within the State of Gujarat and the order provides that only if there is no vacant post, the said applicant Mr. Dave should be deemed to have been appointed as Watchman at Rajkot and then retrenched etc.. It is very clear from the position of vacancies obtaining at present, as disclosed by the Department before us, that, besides the one post at Rajkot, which is vacant, there are two Group D posts, one at Ahmedabad and one at Silvasa and, therefore, there is no question of giving deemed appointment to Mr. Dave at Rajkot much less can it be said that Mr. Dave has a right to be posted at Rajkot. This being the position, the respondents are directed to reinstate the applicant at Rajkot against the vacant

post of Watchman which is there.

This order should be complied with latest before 30th November 1993 and, if any question about the wages payable to the applicant for the intervening period or for regularising the said period arises, the applicant may make an appropriate representation in that behalf to the respondents and the respondents may consider his request sympathetically. O.A. stands disposed of accordingly. No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman.

*AS.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Application No. 04/586/93 of 199

Transfer Application No. _____ Old Writ Pet. NO. _____

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is fit for consignment to the ~~Recd - Room~~ (Decided).

Dated : 30/11/93

Counter-signed :

Section Officer/Court Officer

Sign. of the dealing Assistant. 

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT NEW DELHI

INDEX SHEET

CAUSE TITLE..... OA 556 93..... OF 198□ ..

**NAME OF THE
PARTIES.....** P. A. Parmar

VERSUS

4.0 F.S. on

PART A B & C

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

C.A.T./JUDICIAL SECTION.

Submitted:

Original Petition No:

of

586

1993

Miscellaneous Petition No:

of

Shri

Pravinkhai. A. Parmar

Petitioner(s)

Versus.

UO/2028

Respondent(s).

This application has been submitted to the Tribunal by

Shri

As Vagadia

Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature. Any encumbrance is to be removed and the same is to be submitted on 11-10-93.

ASSTT: 60
11/10

S.O. (J):

Shahen
11-10-93

D.R. (J):

Prabh
11-10-93

KNP24492.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT
AHMEDABAD BRANCH.

ORIGINAL APPLICATION NO. 586 of 1993.
st 567/93

Pravinbhai Anandbhai Parmar, Petitioner.

Versus.

Union of India., and another. Respondents.

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Asw C Padar
for P A

Court

OffEx 567/AB

Filed by Mr. A.S. Vafadaria
Learned Advocate for Petitioners
with second set of 2 copies
of the complaint and served to
other side

1/23/1993 Ashefn
8/10/93 Dy. Registrar C.A.T (J)
Ahmedabad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH.

original Appn. No.

PETITION NO.

of 1993

OF 1993.

Pravinbhai Anandbhai Parmar,
Hindu, aged 35 years,
occupation Service,
Residing at C/o. Anandbhai
Mulabhai , Nari Road,
Kumbharwada, opposite-
Fazalbaug, Bhavnagar. Petitioner.

versus

(1) Union of India,

Notice to be served

upon the Ministry of

Industry, Small Industries

Services Institute,

New Delhi ...

(2)

(2) Dy. Director,

Small Industries Institute

Harsiddh Chambers, 4th floor,

Ashram Road, Ahmedabad. ... Respondents.

PARTICULARS OF THE PETITIONER:

Name:- Pravinbhai Anandbhai Parmar,

Residence:- C/o Anandbhai Murabhai,

Nari Road, Kumbharwada,

Opp. Fazalbaug, Bhavnagar.

SERVING WITH :

Serving in the Small Industries

Institute, Ministry of Industries,

Government of India at Extension Centre,

Bunder Road, Bhavnagar, having Regional

Office at Small Industries Service

Institute at 4, Harsiddh Chambers,

Ashram Road, Ahmedabad.

POST :)- Watchman Class IV Employee.

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(3)

PARTICULARS OF THE RESPONDENT :-

(1) Union of India,

Ministry of Industry,

Small Industry Service Institute Branch,

New Delhi.

(2) Deputy Director,

Small Industries Institute,

Harsiddh Chambers, 4th floor,

Ashram Road, Ahmedabad.

CHALLENGED ORDER :

Order of reinstatement made by the res-

pondent no.2 dtd. 24-9-93 which is -

amounting to transfer of the petitioner

from Bhavnagar in the State of Gujarat

to Ettumanur in the State of Kerala.

The impugned order is annexed herewith

as Annexure 'A'.

GROUND OF CHALLENGE :

That the petitioner is a watchman -

(4)

vide appointment order number A-12012

(4)/88/1237 dated 28th April 1988 as a

permanent watchman, and working as Respondent

No.1. Extension Centre at Bhavnagar from

5.5.1988 and the petitioner is a citizen

of India and as such entitled to all funda-

mental rights guaranteed under the Constitution

of India.

2. That the petitioner is Class IV

Employee of respondents and working since

last more than six years continuously

service of Respondents without any break

and without any adverse remarks. The -

Respondents are terminating services of

the petitioner without any notice and

reasonable grounds, with effect from

31.5.1992.

3. The petitioner challenged the

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(5)

aforesaid order before the Central Adminis-
trative Tribunal, Ahmedabad ~~xx~~ Bench vide
O.A.No. 461/92 . After hearing both the sides
the Honourable Tribunal vide Judgement and
order dtd. 24-6-1993 allowed the said petition
and directed the respondents herein to -
reinstate the petitioner with continuity of
service and with all the consequential benefits
including back wages and further directed them
to do so within and period of 2 weeks from
the date of the order. In compliance with the
said order, the respondents herein have passed
the aforesaid order of reinstatement.

4. The aforesaid order is malafide,
vindictive and passed with bad intention to
harrass the petitioner.

5. It was the case of the respondents
terminated in O.A.No. 461/92 that they have dismissed

(6)

the petitioner because they are closing many units in Gujarat and there are no vacancy to absorb the petitioner in any of the units in Gujarat and there is no vacancy. But the Honourable Tribunal, in that case held that said termination is illegal. It was also the case in that petition that the act of the respondent is vindictive and malafide and in order to harrass the petitioner, they have terminated his services.

6. The petitioner submits that as a reply to the aforesaid impugned order dtd.

27-9-93, petitioner sent a letter dated 1-10-1993 expressing his grievances against the posting at Ettamunur. But they have not taken notice of the said letter and they have not replied to that letter.

(7)

7. Petitioner submits that petitioner is a Harijan, a Schedule caste person. He is not literate. He knows only Gujarati language. He has four children. They are all studying in Gujarati language. They do not know any other language. His family members also do not know any other language than Gujarati and his family is a large one, consisting of mother, father, sick wife and four children. If he is posted as per the order in the State of Kerala, he will not only he, but his family members especially his children will find it difficult to - accomodate in the State of Kerala where Malayali language is spoken. They will find education difficult, social intercourse with people in the State of Kerala difficult. Moreover, as he is a Class IV employee, his pay is ~~xx~~ small and meagre, it will be

(8)

very difficult for him and his family members to adjust themselves in the State of Kerala in altogether different social atmosphere and climate. His children will find it very difficult to education wherein Kerala. Moreover, petitioner will also find his job in the State of Kerala very difficult because of the language problem. He will find very difficult communications with his superiors because of the language difficulty.

8. Petitioner submits that there are many vacancies for the post of IVth class employee in the State of Gujarat in the respondent's units in Gujarati. Shri F.R. Singh, a watchman has retired from Rajkot office, Shri Babubhai Baria and Babubhai Parmar have retired from Ahmedabad office. Even there are vacancies in the

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(9)

other places in the State of Gujarat also.

9. The petitioner submits that the respondents has other avenues to accommodate in other Class IV post in the State of - Gujarat.

10. Because the petitioner had approached the Honourable Central Administrative Tribunal by O.A.No. 461/92 and had challenged the order of Termination and they had to submit to the order of the Hon'ble Administrative Tribunal reinstating the petitioner. Therefore, out of vengeance and vindictiveness and with intention to harrass the petitioner, they have made the aforesaid challenge - order of reinstating which is amounting transferring the petitioner to the State of Kerala so that it may be difficult for the petitioner to go to the place in the State of Kerala and may himself abandant

(10)

to go to the State of Kerala and may not accept the said posting and may voluntarily leave the services ~~with~~ of the respondents.

LIMITATION

The petition is made within the period of limitation.

JURISDICTION:

The last posting was in Bhavnagar and order is made by the respondent no. 2 having his place in Ahmedabad, the Ahmedabad Bench of the Honourable Tribunal has got jurisdiction.

ANY OTHER LITIGATION ABOUT THE SUBJECT MATTER :---

The petitioner submits that he has not instituted any other petition in any other Court or Tribunal except this one to this Hon'ble court.

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(11)

FINAL RELIEF CLAIM BY THE PETITIONER :-

That the order passed by the Respondents dated 24-9-1993 to the extent posting him at the office of Director, Production Centre, Ettamunur may be declared null and void and malafide and the respondent may be directed to post him at his original place of ~~work~~ work at Bhavnagar or at any other office in the State of Gujarat, or any other relief which the Hon'ble Tribunal deems fit.

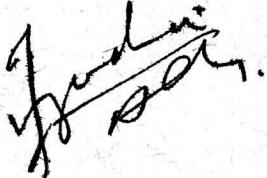
INTERIM RELIEF :

Pending hearing of this petition, the impugned order to the extent of posting him at the office of Director, Production Centre, Ettumunur may be stayed and the respondents may be directed to post him at his original place of work at Bhavnagar or at any other place in the State of Gujarat.

(12)

AND FOR THIS ACT OF KINDNESS THE
PETITIONER SHALL EVER PRAY.

Ahmedabad.

Dt. 6-10-1993. Pravinbhai Anandbhai Parmar


VERIFICATION

I, Pravinbhai Anandbhai Parmar,
the petitioner abovenamed do hereby verify
on oath that what is stated above is true
to the best of my knowledge, information and
belief and I believe the same to be true. I have
not suppressed my material fact
Ahmedabad.

Dt. -10-1993 Pravinbhai Anandbhai Parmar

Annex A

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Telex: GUEX-IN-0121-6314

Telegram: SMALLIND

Phone: 447147, 447248,
405339

SMALL INDUSTRIES SERVICE INSTITUTE
Ministry of Industry
Government of India
4th floor, Harsiddh Chambers, Ashram Road, Ahmedabad-14.

No. A-16011/20/88 | 696

Dated: 24.9.93

✓
By Speed Post

ORDER

In compliance with CAT, Ahmedabad judgement delivered on 24.6.1993 in O.A. No. 461/92, the Additional Secretary and Development Commissioner (SSI&ARI) has approved the reinstatement of service of Shri P.A. Parmar, Ex-watchman of EC, Bhavnagar w.e.f. 1.6.92 with all consequential benefits including back wages and directed Shri P.A. Parmar, Ex-watchman to report to Director, Production Centre, Ettumanur for joining his duty there against an existing vacancy.

Shri Parmar should report for duty at Production Centre, Ettumanur, immediately on receipt of this order.

L. Gunasekaran
(L. Gunasekaran)
Deputy Director (Tech)
for Director.

Shri P.A. Parmar,
C/o. Anandbhai Mulabhai,
Hari Road,
Kumbharwada, Opp. Fazal Baug,
Bhavnagar.

c.c. to: 1. The Registrar, CAT, B.D. Patel House, Narayanguda, A'bad.

2. Shri O.A. Chakravarty, Dy. Director (Admn), O/o. DC, SSI,
New Delhi with reference to his letter no. G-18014/7/
93-A(NG) dt. 23.9.93.

3. The Director, Production Centre, Ettumanur- 686631
Kottayam distt., Kerala.

4. Accounts Section.

5. PAO, SSI, Bombay/Madras.

6. File No. A-16011/5/93.

✓ for Director.

True Copy

Aswaklepade

A

By Regd AD

PRAVINBHAI ANANDBHAI PARMAR,
c/o. ANANDBHAI MULABHAI PARMAR,
Nari Road, Kumbharwada,
Opp: Fazal Baug,
BHAVNAGAR.

Date : 01 /10/1993

To

The Director,
SMALL INDUSTRIES SERVICE INSTITUTE,
4th Floor, Harisidhha Chambers,
Ashram Road,
AHMEDABAD-380014.

SUB: Regarding the posting at Production centre
Ettumanur, - 686631, Kottayam Distt. KERALA.
of the Applicant P. A. Parmar, WATCHMAN

REF: A-16011/20/88/696 Dated 24/09/93
Received on 27/09/93

Respected Sir,

I, the undersigned submits as under :-

1.. I am watchman of 4th category post, serving under your kind control. In compliance with CAT, Ahmedabad your Honour have posted me at above place at Keral State. I am Gujarati Scheduled Caste candidate. Coming from the Poor family. I have got 4 children, Old mother & father & sick wife, all depend upon me, I do not know any language of the Keral State. Please, Sympathise on my miserable & Poor situation without prejudic with the judgement of CAT, Ahmedabad and for the sake of humanity and livelihood of my down trodden family, post me In state of Gujarat immediately with further/ amended order immediately & oblige.

In Gujarat, there are Many vacancies for the post of 4th class workers. Shri F.R. Singh, Watchman, has retired from Rajkot Office, Shri Babubhai Bariya and Shri Babubhai Parmar have retired from Ahmedabad Office, even there is a vacancies

1/2/1

at selvas.

Your Hon. Have consider all the circumstances of
shri E. Y. Gandhi(Helper) and posted at Jamnagar.

In the above circumstances I pray with mercy to
your Honour as Under :-

- a)..By keeping my Family situation and the
responsibilities, please post me at any
place in Gujarat. Without Rejudic to the
judgement of the CAT, Ahmedabad.
- b)..Please help me Save my family from starving
and unavoidable unconfárments. And save life
of my sick wife & old mother.

Hoping for your early & immediate reply.

Yours faithfully,
20/01/1986
[Signature]

Copies To

- 1).Shri O.A.Chakravorty,
Deputy Director,
C/o. D C, SSI, New Delhi
- 2).The Director, Production Centre,
Ettumanur, KuttayamDistt, Kerala.
- 3).The Registrar, CAT, B.D.Patel House,
Navrangpura, Ahmedabad

For C.W.
Ashok Patel

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Ann-C
attn
4/7/6

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. O.A. 461/92
T.A. No.

DATE OF DECISION 24-6-1993

Shri P.A. Parmar Petitioner

Shri P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. N.B. Patel Vice Chairman

The Hon'ble Mr. V. Jadhav Krishnan Member (A)

Pravinbhai Anandbhai Parmar
 C/O Anandbhai Mulabhai
 Nari Road, Kumbharwada
 Op. Hazal Baug, Bhavnagar,

Applicant

Advocate Shri P.H. Pathak

Versus

1. Union of India
 Notice to be served through
 Ministry of Industry, Small
 Industries Service Institute,
 New Delhi

2. Dy. Director,
 Small Industries Service Institute
 Harisidh Chambers, 4th Floor, Ashram Road
 Ahmedabad.

Respondents

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 461 of 1992

Date : 24-6-1993

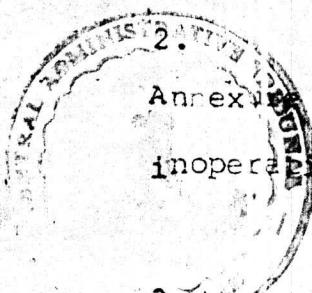


Before Shri N.B. Patel

Vice Chairman.

The applicant was an employee working under the respondent no.2 as a watchman from 20-4-1988 and his services have been terminated by letter dated 27-5-1992 with effect from 31-5-1992. It is stated that the services of the applicant and some other persons are terminated as some of the units in the establishment are closed down. Obviously, therefore, the respondents have purported to retrench the applicant. There is no dispute about the fact that the respondents have not given thirty days notice to the applicant nor have they paid or offered notice pay to him to validly bring about termination of his services. It is also not in dispute that the applicant

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is not paid any retrenchment compensation. It, therefore, follows that the order or letter dated 27-5-1992, whereby the respondents have purported to terminate the applicant's service is illegal, void and of no effect whatsoever. The applicant is entitled to the relief of having the termination of his service quashed and also to the relief of all consequential benefits.



Accordingly, the application is allowed and Annexure A-1, dated 27-5-1992, is declared illegal and inoperative and is hereby quashed and set aside.

3. The respondents are directed to reinstate the applicant with continuity of service and with all consequential benefits including back wages. Reinforcement will be done within a period of two weeks from the date of the receipt of a copy of this order by the respondents and payment of backwages will be made within a period of four weeks from the date of the receipt of a copy of this order. No order as to costs.

Sd/-
(V.Radi Krishnan)
Member (A)

Sd/-
(N.B.Patel)
Vice Chairman

Prepared by: *Jmohi*
Compared by: *Jmohi* 28/6/93
TRUE COPY

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Ashwac Pader
Anand
Officer (1) 28/6/93
Administrative Tribunal
Baroda Bench

4-16011/20/88

1402 1402

BB
28/10/93

28.10.93

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Shri Akil Kureshi,
Addl. Central Govt. Standing Counsel,
A/1, Kailash Tower,
Nr. Darshan Society,
Navrangpura,
Ahmedabad.

By Hand Delivery

Sub: Original application No. 586 of 1993 filed by Shri P. A. Parmar, Ex-Watchman in CAT, Ahmedabad V/s. U.O.I & Others.

Sir,

• • •

Kindly refer to the above application came up before CAT, Ahmedabad on 15.10.93. The next hearing was fixed on 1.11.1993. You are requested to kindly inform the Hon. CAT, Ahmedabad as under on 01.11.1993.

"the Hon'ble CAT vide judgement dated 28.6.1993 had directed the respondent to reinstate the applicant with continuity of service and with all consequential benefits including back wages. Reinstatement is possible only against the same post and only when a continuous vacancy is available against that post from the date of re-instatement. Presently the following vacancies are available in organisation under SISI, Ahmedabad from the date shown against each:

SISI, Ahmedabad	- One Peon from 15.7.1993
BI, Rajkot	- One Watchman from 1.7.1993
BI, Silvassa	- One Helper from 1.5.1993

Since Shri Parmar was a Watchman before retrenchment he has to be reinstated against the same post; his appointment to any other post shall have to be treated as direct recruitment and not reinstatement. He cannot, therefore, be appointed either at SISI, Ahmedabad or at BI, Silvassa. As far as BI, Rajkot is concerned, he can be appointed with prospective effect only from 1.7.1993, as no vacancy was available prior to that date.

Considering the above position, the respondents has endeavoured to implement the directive of the Hon'ble CAT in letter and

Spirit by giving him re-instatement with all benefits including back wages against the vacant post available at P.C. Ettumanoor.

In view of the above position, it is prayed that the Hon'ble CAT may kindly dismiss the application of Shri P.A. Parmar for re-instatement within Gujatare STATE and he may kindly be asked to join duty at P.C. Ettumanoor."

Yours faithfully,

28/10/93
(D.N. KAPOOR)
Deputy Director (Met)
for Director.

Kindly see before issue.

~~Director~~

28/10/93

Sd/-

28/10

(P)

on record (Annexure-A-3) that although there is family pension of Rs.1248/- and there have been lumpsum receipts on account of DCRG etc. there are also liabilities in the form of two unmarried sisters and two younger brothers and Sanjay Kumar, the elder brother by himself cannot be expected to cope with these liabilities. We also note that the respondents have not controverted the statement re : availability of vacancies of drivers in the local office of SISI, Ahmedabad inspite of retrenchment. We therefore, hold that the applicant has a right to the offer of an appointment on compassionate ground of a Group 'D' post in the organisation where his father was last serving. We therefore, dispose of this application by the following order :

ORDER.

The application is allowed. Respondent no.2 in consultation with respondent no.1, is directed to make a firm offer of an appropriate Group 'D' post including the post of a Driver of light motor vehicle in Small Industries Development Organisation within Gujarat to the applicant. If there is no vacant post, the applicant should be deemed to have been appointed as a Watchman at Rajkot and then retrenched and on this footing his name reported to surplus cell ; it being clearly understood that this deeming fiction is created only for the limited purpose of providing compassionate appointment to him and not for any other benefits. We, further direct that necessary action in the matter should be taken by the respondents within a

O.B. 1619 1982
Sanjay P. Dave.



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period of three months of the receipt of this order and the applicant should be suitably informed.

No order as to costs.

(R.C.BHATT)
Juducial Member

(M.R.KOLHATKAR)
Administrative Member

Prepared by *JK*
Compared by *VC*
TRUE COPY

AIT

Section Officer (S)
Sectional Administrative Officer
Chancery Bar.