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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Seniority/
Promotion

O.A. No. 143 OF 1989.
~~ExxExx~~

DATE OF DECISION 11.2.1993

Asrafkhan Ahmedkhan Pathan & Anrs. Petitioners

Mr. V. L. Ashar for Mrs. K. V. Sampat, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N. S. Shevde, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

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?

1. Asrafkhan Ahmedkhan Pathan,
2. Amrat Punabhai,
Cleaners,
Sr.DME, Loco, Pratapnagar,
residing at:
C/o. General Workmen's Union,
Hon. Sec. J.K. Ved,
Rly. Q.No. 406/B,
Godhra.

.... Applicants.

(Advocate: Mr. V.L. Ashar for
Mrs. K.V. Sampat)

Versus.

1. Union of India, represented by
The Divisional Railway Manager,
Western Railway, Pratapnagar,
Vadodara.

2. Sr.Divisional Mechanical
Engineer (Loco)
Western Railway,
Pratapnagar, Railway Yard,
P.O. Vadodara.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A.No. 143 OF 1989

Date: 11-2-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. V.L. Ashar for Mrs. K.V. Sampat,
learned advocate for the applicants and Mr. N.S. Shevde
learned advocate for the respondents.

2. The two applicants casual labourers have
filed this application under section 19 of the
Administrative Tribunals Act, 1985, against the
Western Railway seeking the relief that the respondent
be directed to treat the applicants who passed their
Fireman C grade test in 1985, as being promoted to
post of Fireman C as from their date and year of
passing, and further that the applicants be treated

as being promoted to post of Fireman - B from the date and the year 1987 when their above stated juniors were given such promotion and they should also paid all arrears of difference in salaries, allowances etc. The applicants have mentioned in the beginning of the paragraph of O.A. as under:

"The application is made against the following order:-

Non-reply to representation dated 7th December 1988 addressed to respondent No. 1 and 2 who were approached for granting promotion to higher post of fireman-B though the Juniors of selection panel were so promoted by superseeded applicant's seniority".

3. The respondents have filed reply taking various contentions, but their main contention in reply para 3 is that no reply by the respondents to the representation dated 7th December, 1988 filed by the applicants is not an order against which the applicants can file an application. In para 14 of the reply, the respondents have contended that the representation dated 7th December, 1988 vide Annexure A-2 given by the applicant No.1 was not received by the Divisional Office.

4. The applicants have filed written arguments in which it is mentioned that the applicants had made representation dated 7th December, 1988 vide Ann. A-2 but the said representation remained unanswered. It is mentioned in the written arguments that the applicants waited for six months and then filed the present

Original Application to press their claim as per relief clause in the application. The learned advocate for the respondents drew our attention that the present application has been filed on 3rd April, 1989 which is not disputed also by the learned advocate for the ^{re} applicants who is present in the Court today. The learned advocate for the respondents submitted that the applicants have not produced the evidence of the Registered A.D. to show that the representation Ann.A-2 has been received by the respondents. He submitted that the respondents have categorically denied in the ^{re} reply para 14 that they have ~~not~~ received such representation dated 7th December, 1988. However, according to him, even if it is assumed that such representation was made by the applicants on 7th December, 1988, the applicants ought to have waited for six months period before filing this present application as per Section 20 of the Administrative Tribunals Act, 1985. However, the applicants having filed this O.A. before the expiry of period of 6 months from the date of their representation, this application is premature. ^{re}

5. ^{Submissions} We have read the written ~~statement~~ given by the applicants in this case. We have also heard the ^{re} learned advocates for the parties. Now when the matter ^{re has} of 1989 ^{re} come for final hearing before us, we would not at this stage like to dismiss the matter on the ground that it is premature. More over, the applicants are casual labourers and there is no reason to

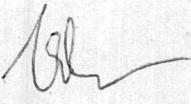
^{not}
disbelieve them that they had made representation
Annexure A-2 on 7th December, 1988. No doubt, they
have not produced the acknowledgement receipt of the
said representation to establish that the respondents
have received the same. The respondents have denied
^{not received such}
of having representation. However, having regard to
the fact that these applicants are casual labourers
and as the matter has come for final hearing before
^{the}
^{us after this} span of more than 3½ years, we do not
consider it
unjust and proper to dismiss the matter at threshold.
We deem just and ^{not}
~~having regard to the proper and just~~ to direct the
respondents competent to decide ~~their~~ representation
Annexure A-2 as per rules and if the applicants or any
of them is entitled to the promotion to the post of
Fireman 'C', the respondents may consider ~~that~~ ^{their} case
and if the respondents are satisfied that the
applicants have passed their Fireman 'C' grade test
in 1985 and if they are satisfied that they should be
treated as being promoted to the post of Fireman 'B'
from 1987 then they may decide according to the rules
and give the benefits accordingly to the applicants.
It may be noted at this stage that as the case is
very much delayed, it would be in the interest of the
applicants if they also ^{send} ~~seen~~ the true copies of the
representation Annexure A-2 dated 7th December, 1988
to the respondents at the earliest so that the
respondents can dispose of ~~not~~ the representations as
early as possible without further delay. Having

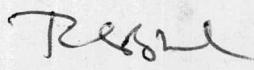
considered all the points we are of the opinion that
the present application can be disposed of by suitable
directions to the respondents to dispose of the
representation of the applicants Annexure A-2 dated
7th December, 1988 according to rules and to inform
them the result of the same.

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O R D E R

The respondents or their competent authority
are directed to dispose of the representation of the
applicants dated 7th December, 1988 vide Annexure A-2
according to rules within three months from the date
of the receipt of the order of this Tribunal and if
they are satisfied that the applicants have passed
their Fireman 'C' grade test in 1985 and if they are
satisfied that as per the rules ~~and~~ they should be
treated as being promoted to the post of Fireman 'B'
from 1987, then the respondents may give benefit
accordingly to the applicants according to the rules
applicable to them. The applicants in their own
interest may send a copy of the representation
Annexure A-2 to the respondents as early as possible.
The application is disposed of. No order as to costs.


(V. Radhakrishnan)
Member (A)


(R.C. Bhatt)
Member (J)