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NO  
seniority/  
promotion

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 143 OF 1989.

~~Ex No.~~

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 <sup>be</sup> paid all arrears of difference in salaries, allowances etc. The applicants have mentioned in the beginning <sup>n</sup> 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 superseeding 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 <sup>re</sup> 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 reply para 14 that they have ~~not~~ <sup>re</sup> 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 prematured. <sup>re</sup>

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



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  
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  
us after <sup>the</sup> ~~this~~ span of more than 3½ years, we do not  
<sup>consider it</sup>  
~~un~~just and proper to dismiss the matter at threshold.  
<sup>We deem just and</sup>  
~~having regard to the proper and just~~ to direct the  
respondents competent to decide <sup>the</sup> ~~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 <sup>their</sup> ~~that~~ 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 <sup>send</sup> ~~send~~ 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 <sup>of</sup> ~~of~~ the representations as  
early as possible without further delay. Having




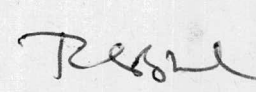
considered all the points, we are of the opinion that the present application can be disposed of by suitable directions to the respondents to dispose of the representation of the applicants Annexure A-2 dated 7th December, 1988 according to rules and to inform them the result of the same.

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ORDER

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)

vtc.