

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

2A

O.A. No.1748 of 1992.

NEW DELHI, THIS THE 26<sup>th</sup> DAY OF SEPTEMBER, 1997.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR. N.SAHU, MEMBER (A).

Rajender Prashad  
s/o Shri Jwala Din,  
House No.432, Prakash Mohalla,  
East of Kailash,  
New Delhi.

... Applicant.

(BY ADVOCATE SHRI P.M. AHLAWAT)

Vs.

1. Union of India through  
the General Manager, Northern Railway,  
Baroda House, New Delhi.

2. The Chief Personnel Officer,  
Northern Railway,  
Baroda House, New Delhi.

... Respondents.

(SHRI D.S.MAHENDRU, PROXY FOR SHRI P.S. MAHENDRU, ADVOCATE)

ORDER

JUSTICE K.M. AGARWAL:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for directing the respondents to restore his seniority as per the initial/<sup>provisional</sup> seniority list dated 2.2.1987 (Annexure A-2), after quashing the recasted provisional seniority list dated 20.2.1991 (Annexure A-4). He has also made a prayer for quashing the selection process initiated by impugned letter dated 12.5.1992 (Annexure A-1) and the written tests held on 6.6.1992 and 13.6.1992, pursuant to the said process of selection, on the ground that the applicant was kept out of consideration for selection to the next higher post of Asstt. Supdt.(P).

2. Briefly stated, the applicant belongs to *Jm* Scheduled Caste community. He was initially appointed as

(25)

Clerk on 22.2.1978. He got accelerated promoted to the post of Senior Clerk with effect from 11.6.1981. He was further promoted to the post of Head Clerk with effect from 1.1.1984. In the provisional seniority list of Head Clerks published on 2.2.1987, (Annexure A-2), the name of the applicant was shown at S.No.101. The name of one Smt. Madhukar Bani was shown at S.No.98 and that of one Smt. Janak Kishori was shown at S.No.103 in the said list. Pursuant to order dated 24.9.1984 made by the Supreme Court in Civil Miscellaneous Petition No.26627 (IN CA 2017/75) of 1984, U.O.I. Vs. J.C. Malik & Others, the respondents issued on 20.2.1991 the recasted provisional seniority of Head Clerks (Annexure A-4). In this recasted seniority list, the name of the applicant was shown at S.No.109, whereas those of Smt. Madhukar Bani and Smt. Janak Kishori were shown at S.Nos. 53 and 54 respectively. Thereafter in the year 1992, it appears from Annexure A-1 that a selection process was started for selecting candidates for the post of Assistant Superintendents (P) from that of the Head Clerks. The list of the staff of Personnel Branch who were required to appear in the written test for selection to the post of Asstt. Superintendents (P) annexed to Annexure A-1, did not include the name of the applicant, though it included the names of Smt. Madhukar Bani and Smt. Janak Kishori at S.Nos.30 and 31. The applicant and some other staff members belonging to the reserve category submitted a representation before the respondents for inclusion of Scheduled Castes seniormost Head Clerks in the list of the persons for selection to the higher post. As the representation was not decided within a reasonable time, *Jm* this O.A. was filed by the applicant for the said reliefs.

26

3. The learned counsel for the applicant made two-fold submissions. It was first submitted that according to the respondents, the initial seniority list dated 2.2.1987 was recasted pursuant to this Tribunal's order dated 18.5.1990 in O.A. No.936/90, (Annexure A-5) but that order does not indicate any such direction for recasting the seniority. Secondly, it was urged that the promotion of the applicant to the post of Senior Clerk and thereafter to that of Head Clerk were prior to the date of Supreme Court order dated 24.9.1984 referred to in the Tribunal's order dated 18.5.1990 and, therefore, he could not be excluded from consideration for promotion to the post of Asstt. Supdt. (P) by recasting the seniority list in the manner done by the respondents.

4. After hearing the learned counsel for the parties and perusing the record, we are of the view that inter se seniority of government servants in a grade is fixed on certain principles. When several persons are simultaneously promoted from lower grade to higher grade, they carry with them their seniority to higher grade from that of lower grade. Referring to the initial provisional seniority list (Annexure A-2) and the recasted provisional seniority list (Annexure A-4), the learned counsel for the applicant submitted that in the initial provisional seniority list, the applicant's name was shown at S.No.101 whereas those of Smt. Madhukar Bani and Smt. Janak Kishori were shown at S.Nos. 98 and 103 in the said list. In the recasted provisional seniority list, his name was shown at S.No.109, whereas those of Smt. Madhukar Bani and Smt. Janak Kishori's names were shown at S.Nos. 53 and 54. This was without any basis and, therefore, arbitrary and illegal.

5. We do not find any substance in the contention.

*Jm* Annexure A-5 contains the interim order made by this

27

Tribunal on 18.5.1990 in O.A. No.936/90. The interim relief granted was as follows:

" As regards interim relief, issue notice to the respondents, returnable on 31.5.1990. In the meantime, the respondents are directed to make promotions to the post of Asstt. Superintendent and Superintendent in the Personnel branch of the Headquarters Office, Northern Railway, Baroda House, New Delhi, strictly in accordance with the Supreme Court's order dated 24-09-1984 filed at Annexure A-2 to this application. Issue dasti."

The Supreme Court order dated 24.9.1984 referred to in the aforesaid Tribunal's order dated 18.5.1990 reads as follows:

"We clarify our order Feb.24, 1984 by directing that the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the appeal. If any promotions have been made after Feb.24,1984, otherwise then in accordance with the judgment of the High Court, such promotions shall be adjusted against the future, vacancies."

In J.C. Malik's case, 1978 (1) SLR 844, it was held by the Allahabad High Court that percentage of reservation relates to posts and not to vacancies. In Ajit Singh Januja Vs. State of Punjab, JT 1996 (2) SC 727, it was held by the Supreme Court that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Similar view was taken by the Supreme Court in R.K. Sabharwal Vs. State of Punjab, (1995) 2 SCC 745. The applicant was much junior to Smt. Madhukar Bani and to Smt. Janak Kishori in the lowest cadre of clerks. Being a Scheduled Caste, the applicant got accelerated promotion to the post of Senior

28

Clerk. Subsequently Smt. Madhukar Bani and Smt. Janak Kishori were also promoted as Senior Clerks. All the three were simultaneously promoted to the post of Head Clerk on 1.1.1984. Accordingly in the seniority list of Head Clerks, they were to retain their seniority over the applicant, but by mistake in the provisional seniority list of Head Clerks, the name of the applicant was shown above the name of Smt. Janak Kishori, but below the name of Smt. Madhukar Bani. As the list was provisional, it could be amended from time to time so long as the final list was not published. Under these circumstances, if the impugned recasted provisional seniority list was published by the respondents, they cannot be said to have committed any illegality or irregularity.

6. Assuming that there was no direction by the Court or Tribunal for refixation of seniority, or for amending the provisional seniority list of Head Clerks, the respondents cannot be said to have committed any illegality or irregularity in correcting the seniority list in accordance with the law laid down by the Supreme Court. The applicant and so many others belonging to the reserved categories were included in the provisional seniority list of Head Clerks (Annexure A-2). The applicant and one Smt. Sheela Chauhan were immediately above the name of Smt. Janak Kishori. Both of them were persons belonging to reserved category. Shri Dwarika Prasad and Shri Naubat Singh, immediately above the name of the applicant were also persons belonging to reserved category. Accordingly, if Smt. Janak Kishori's name was shown above the name of the applicant and other Scheduled Caste candidates, they can have no reasonable grievance in the light of the decision of Allahabad High Court in J.C. Malik's case (supra) that percentage of reservation relates to posts and not to vacancies. So many others belonging to reserved categories

*For*

29

were shown above the names of Smt. Madhukar Bani and Smt. Janak Kishori in the seniority list (Annexure A-2) and, therefore, in the light of the direction of the Tribunal dated 18.5.1990 in O.A. No.936/90, if the respondents first made corrections in the seniority list and thereafter proceeded with the process of selection for the next higher post of Assistant Superintendents (P), they cannot have any reasonable grievance against the course adopted by them.

7. It is true that the applicant was promoted to the post of Senior Clerk and thereafter to the post of Head Clerk with effect from 1.1.1984 and that the decision of the Supreme Court came thereafter, but how can <sup>we</sup> escape the judgment of the Allahabad High Court which was of the year 1977. By the various decisions of the Court or Tribunal or by the impugned actions of the respondents, the promotion of the applicant to the post of Senior Clerk or to that of Head Clerk has not been touched, but that does not mean that on the basis of such accelerated promotion, as was given to the applicant in the year 1981 to the post of Senior Clerk, he would be treated to be senior to general category candidates who were subsequently promoted to the post of Senior Clerks but were senior to applicant in the feeder category of Clerks. It may also be mentioned that the applicant has not joined Smt. Madhukar Bani or Smt. Janak Kishori as parties to these proceedings.

8. For the foregoing reasons, we find no merit in this O.A. Accordingly it is hereby dismissed but without any order as to costs.

*K.M.*

(K.M. Agarwal)  
Chairman

*Karansinh Sahu*  
(N. Sahu)  
Member (A)