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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 381/96
T.A. No.

DATE OF DECISION 27.8.1998

Smt. Usha Asayach **Petitioner**

Mr. J.K. Kaushik **Advocate for the Petitioner (1)**

Versus

Union of India & Ors. **Respondent**

Mr. R.K.Soni, **Advocate for the Respondent (s)**

Nos. 1 & 2.

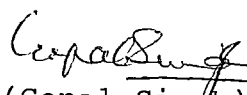
Mr. S.K.Malik, Counsel for respondent No.3.

CORAM :

The Hon'ble Mr. Gopal Krishna, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? **Yes**.
2. To be referred to the Reporter or not ? **Yes**.
3. Whether their Lordships wish to see the fair copy of the Judgement ? **No**.
4. Whether it needs to be circulated to other Benches of the Tribunal ? **No**.


(Gopal Singh)
Administrative Member


(Gopal Krishna)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No.381/96

Date of Order: 27.8.1998

Smt. Usha Asayach w/o Shri Gajendra Singh, r/o Near Sita Ram Baby Park, Baggar Chowak, Jodhpur, at present employed on the post of Head Clerk in the office of C.M.S. Northern Railway, Jodhpur.

... Applicant

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.
3. Shri Ram Adhin, Head Clerk, Office of Chief Medical Superintendent, Northern Railway, Jodhpur.

... Respondents

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents Nos. 1 and 2.

Mr. S.K. Malik, Counsel for the respondent No. 3.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh

Applicant, Smt. Usha Asayach, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 28.10.1996 (Annx. A/1) and also for issuing a direction to the respondents for allowing all the consequential benefits to the applicant.

Gopal Singh

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2. Applicant's case is that she was initially appointed on the post of Clerk vide order dated 14.9.1983 on compassionate ground. That her lien was fixed in Medical Department vide order dated 22.3.1984. That she was further promoted as Senior Clerk and Head Clerk w.e.f. 18.1.1985 and 19.2.1993 respectively. That respondent No. 3, Shri Ram Adhin, has all along been junior to her but the official respondents vide their letter dated 28.10.1996 (Annx. A/1) has changed the seniority placing Shri Ram Adhin (respondent No.3) as senior to applicant. Feeling aggrieved the applicant has filed this O.A.

3. Notices were issued to the respondents and they have filed their reply.

4. We have heard the learned counsel for the parties and perused the records of the case.

5. It is seen from the record that respondent No.3 (Ram Adhin) had earlier filed an O.A. No.101/94 in this Tribunal praying for promotion to the post of Head Clerk. The applicant in this O.A. was respondent No. 5 in the said O.A. No.101/94. The O.A. No. 101/94 was disposed of by this Tribunal vide its order dated 19.12.1995. While disposing of the said O.A., this Tribunal has observed as under:

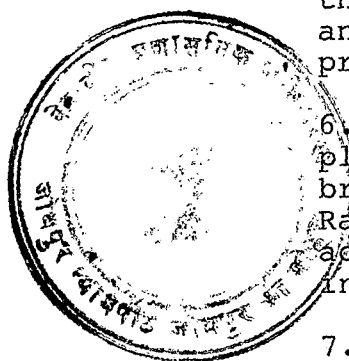
"5. We have given careful consideration to pleadings and arguments of both the parties. It is an admitted fact that the applicant is a Scheduled Caste candidate and is entitled to the reserved quota promotion under the instructions issued by the Railway Board at Annexure A/13. There is no scope for any misinterpretation expressly in view of the detailed instructions issued on 30.11.1993 before the promotion orders of the respondent No.5 were issued. The reply given by the respondents is very disquieting, to say the least. The

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respondents have tried to cover up the irregular promotion and absorption of the respondent No.5 by giving the contradictory replies. The respondent should have come up with the facts relating to the appointment of the respondent No.5 and removed the doubts which we had in our mind while considering this case. We find that the replies are aimed at covering up the true facts of the appointment and almost tantamounts to giving false and wrong information to mislead the court. This kind of reply given by the responsible officers employed in the office of the respondent No. 1 & 2 almost amounts to perjury which can be taken note of. However, in view of the fact that our observations will be carried to the proper quarters in the Railway Administration, we do not want to make further comments in this matter. It would be suffice to mention here that we would be constrained to take remedial action if this kind of misleading and improper replies are filed through written statements on oath by the respondents and attempts are made to subvert the judicial proceedings.



6. The learned counsel for the respondents will please ensure that our observations made above are brought to the notice of the highest authority in the Railway Administration so that they can take remedial action against those who had contributed towards this incorrect and wrong information to the Tribunal.

7. In view of the what we have discussed above the O.A. succeeds and we hereby direct that the applicant shall be given his due promotion vis-a-vis respondent No.5 after taking into account his regular service in the feeder cadre of Senior Clerk as also the fact that he belongs to a reserved community and has right to be appointed with reference to the point in the roster. The post at number one of the roster points in the cadre is reserved for the Scheduled caste community and applicant has complete and unqualified right to that post. His seniority has to be adjusted accordingly and date of his seniority in the cadre be fixed in the terms of this order. This order shall be complied with within four months of the receipt of the order. No order as to costs."

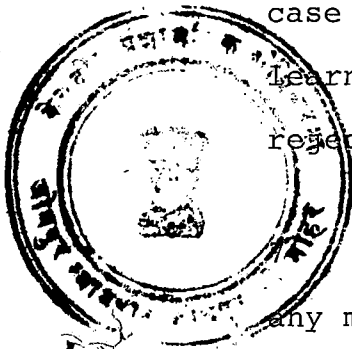
6. It is seen from the above order that the present applicant had enjoyed irregular promotion to the post of Senior Clerk and Head Clerk. Since the present applicant was also named as respondent No.5 in O.A. No.101/94 and she did not apply for review of the order dated 19.12.1995 in O.A. No.101/94, in our opinion, she cannot now turn around and claim seniority over respondent No.3 (Ram Adhin) who has enjoyed regular promotion as Senior Clerk and Head Clerk after proper selection/test. The learned counsel for the applicant in this

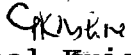
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connection has brought to our notice Para 314 of IREM Volume-I, this para deals with the seniority of persons who are promoted w.e.f. the same date. In our opinion, this para is not relevant to the case in hand. The respondent No.3 (Ram Adhin) has been promoted against the point number one reserved for a Scheduled Caste candidate in the reservation roster. Thus, the argument of the learned counsel for the applicant claiming seniority for the applicant on the basis of the Para 314 of IREM Volume-I is not tenable and is, therefore, rejected. The learned counsel for the applicant has also cited the judgement of Hon'ble the Supreme Court in the Sabarwal's case and submitted that the seniority of the applicant should be restored in terms of the judgement of Hon'ble the Supreme Court. It is pointed out here that the judgement of Hon'ble the Supreme Court in the said case was implemented w.e.f. 10.2.1995 and the applicant as also the respondent No.3 (Ram Adhin) were given promotion w.e.f. 19.2.1993, much before the law laid down in this regard by Hon'ble the Supreme Court. As such, the judgement in Sabarwal's case will not be binding on this case. The contention of the learned counsel for the applicant in this regard is also rejected.

In the result, we find that the application is devoid of any merit and the same deserves to be dismissed.

8. The O.A. is accordingly dismissed with no order as to costs.


 (Gopal Singh)
 Administrative Member


 (Gopal Krishna)
 Vice Chairman

Aviator/