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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1960/89

New Delhi this the 2nd Day of May, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)
Hon'ble Ms. Lakshmi Swaminathan, Member(J)

Shri A.P. Nagrath,
S/o Shri H.P. Rai,
R/o 6-A, Tilak Bridge,
Railway Officers' Colony,
New Delhi.

Applicant

(By advocate Shri R.K. Kamal)

versus

Union of India,
through its Secretary,
Railway Board,
Rail Bhawan,
Rafi Marg,
New Delhi-1.

Respondent

(By advocate Sh. R.L. Dhawan)

O R D E R

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

The applicant, Sh. A.P. Nagrath, Deputy General Manager, Northern Railway is aggrieved that even though he had become eligible for induction in Class-I permanent post of I.R.S.E.E. cadre after completion of 3 years service as Temporary Assistant Electrical Engineer, ^{Dr} his seniority in that cadre was fixed with effect from 10.4.1973 only.

The applicant joined Indian Railways as Temporary Assistant Electrical Engineer on 9.5.63. According to him after completion of three years of service, he was considered eligible and competent to continue in the Class-I permanent post of IRSEE.

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cadre as Asstt. Electrical Engineer, Katihar on a long term basis. No where it was mentioned that the promotion to Class-I cadre was ad hoc. He continued to work as Asstt. Electrical Engineer in different divisions with the bonafide belief that he had been appointed to these posts and allowed to continue to hold them without break on being found fit for Class-I cadre after completing 3 years service. He was even promoted to a permanent senior-scale post in Class-I cadre of I.R.S.E.E. as Divisional Electrical Engineer, Alipurduar Division in August, 1969. He claims that he was inducted in Class-I cadre with effect from 9.5.1966. As he had been continuously officiating ⁱⁿ Class-I cadre and this was followed by regularisation, his seniority should be fixed taking into account his officiating service. The following reliefs have been sought for:-

- (i) The respondents be directed to count the entire officiating service of the applicant from 9.5.1966 in Class-I cadre posts for refixation of his seniority in Class-I cadre of I.R.S.E.E. with effect from 9.5.1966;
- (ii) The respondents be directed to grant all consequential benefits by way of promotions, arrears of pay etc. from the dates when his juniors were promoted to higher scales.

In the counter filed on behalf of the respondents, ^{by} ~~an~~ preliminary objection has been raised that those officers who will be affected adversely if this application is allowed, have not been impleaded. The recruitment of Temporary Assistant Officers was made not only in the Electrical Engineering Department of the Railways but in other departments etc. and the total number of such officers exceeds 1000. The

Tribunal's decision would be applicable to all of them. Further, the case of erstwhile Temporary Assistant Officers/Engineers had earlier been considered by the Hon'ble Supreme Court in Writ Petitions No.147-151 of 1976 with SLP (Civil) No.7905 of 1979 in *Katyani Dayal & Ors. Vs. Union of India & Ors.* decided on 26.3.1980 (1980(2) SLR 79). The claims of the petitioners of equality with direct recruits was not accepted. Sh. A.P. Nagrath was absorbed permanently to the Indian Railway Service of Engineers with effect from 10.4.1978 and was assigned seniority from 10.4.1973 after giving him a weightage of five years for service rendered prior to his absorption.

Wc We have gone through the pleadings and heard the learned counsel for the parties. The case of erstwhile Temporary Assistant Officers was again considered by the Hon'ble Supreme Court in Writ Petitions No.7900-7902/82 decided on 18.6.1993 ^{(6SLJ 1993(3) Vol.49 P.114)} in which the Hon'ble Supreme Court has held;

" that similar relief was claimed in *Katyani Dayal & Ors. Vs. Union of India & Ors.*, 1980(3) SCR 139 in which the quality and character of the personnel of the two parallel services was elaborately detailed and it was held that classification of temporary Asstt. Officers separately from the Indian Railway Service Engineers of Class I was neither discriminatory nor violative of Articles 14 and 16 of the Constitution. The instant batch of matters was virtually on the same lines. To find fault with that decision, at this juncture again on the touch-stone of equality dimension would be to unsettle a settled position. Which was neither in the interest of justice nor in the interest of service. The rule of weightage appeared to be reasonable and this was a pattern which had been noticed and approved in many a service. No compelling reason to deviate from the principles enunciated in the said judgment was seen. Hence the Petitions and appeals fail. "

In view of the aforesaid judgement of the

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Hon'ble Supreme Court, the application fails.

No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

B. N. Dhondiyal
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MEMBER (A)

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