

Central Administrative Tribunal:Principal Bench

(31)

OA No. 2421/91

New Delhi, this the <sup>3<sup>rd</sup></sup> day of July, 1996

Hon'ble Shri S.R.Adige, Member (A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Sh.Yad Ram s/o Sh. Amar Singh,  
Loco Cleaner, Loco Shed,  
Northern Railway,  
Delhi Sarai Rohilla,  
Delhi.

...Applicant

By Shri B.S.Mainee, Advocate

Versus

1. Union of India through  
The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
Bikaner.
3. Loco Foreman,  
Northern Railway,  
Delhi Sarai Rohilla,  
Delhi.  
(None appeared for respondents)

...Respondents

ORDER

By Hon'ble Shri S.R.Adige, Member (A)

In this application Shri Yad Ram has prayed for a direction to the respondents to consider him for promotion as Fireman on ad hoc basis from the date his juniors were promoted, with consequential benefits of fixation of pay and arrears.

2. The applicant's case is that he was appointed as a Casual Labourer under P.W.I. Delhi Sarai Rohilla in 1973 on regular basis. He contends that in accordance with the railway rules, 10% of posts in the regular cadre in Carriage & Wagon Department as well as Loco Department are reserved for Gangmen and on the basis of

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the said 10% intake against recruitment, the applicant 's category was changed from Gangman to Loco Cleaner in 1979. He states that under the extant rules those Gangmen who were recruited against 10% intake in the Loco and Carriage Department, were to be given the benefit of 50% of their service in the Gangmens Cadre, and having switched over as Loco Cleaner, his date of appointment in the Loco Department should have been considered as 1976, because he worked for six years as a Gangman. He states that despite representations, his prayer has not been acceded to by the respondents, and meanwhile similar benefits were given to others who had worked as Gangman. He further states that the respondents have promoted some of the cleaners to the post of Fireman, all of them junior to himself.

3. The respondents in their reply have challenged the OA. They state that 10% of the vacancies and not 10% of the posts are filled in by Gangmen/Store Khalasies and Safaiwalas in the Loco and Carriage & Wagon Department. It is denied by the respondents that any applications were invited from the existing staff for filling the 10% vacancies. According to the respondents, the applicant applied for change of category as Loco Cleaner on 30.3.1976 and was advised wide letter dated 29.4.76 (Annexure I) that his request would be considered if he was literate and accepted the bottom of seniority position. He was further advised that passing of medical examination would not confer on him any right to be absorbed as a regular cleaner. It is further submitted that again in 1978 he applied for change of category as Loco Cleaner, and was directed to be medically examined which was a pre-requisite

condition. After clearing the medical examination, he was called for literacy test alongwith educational qualification certificate <sup>Vide</sup> letter dated 19.12.78 (Annexure-II) but he did not turn up. He appeared for the literacy test on 23.5.79 and thereafter his category was changed as Loco cleaner on bottom seniority <sup>Vide</sup> letter dated 7.7.1979 (Annexure-III). (3)

4. The applicant has filed a rejoinder, in which he has denied the contents of the respondents' reply and re-asserted the contentions taken in his OA. He contends that he was regularised as Gangman w.e.f. 1.7.73 and not w.e.f. 27.4.77 and in this connection has invited our attention to serial No. 556 of the seniority list dated 12.9.89. It has also been contended that all those Gangmen who applied for being switched over as Cleaners in the Loco department as well as in Carriage department were nodoubt given bottom seniority, but the weightage of 50% of the period worked as Gangman were given to them after having been absorbed as cleaner. It is stated that had the change in category not been on his own request, he would have been entitled to weightage of 100% of the period he had worked as Gangman.

5. We have heard the learned counsel Shri B.S.Mainee, for the applicant. None appeared for the respondents when the case was called out. We have perused the materials on record and given the matter our careful consideration.

6. According to the applicant's own contention in paragraph 4.3 of his OA, under the extant rules, those Gangmen who are recruited against 10% intake against the post of loco cleaners are to be given the benefit of 50% of the service put in by them as Gangmen, for

consideration for promotion to higher post in the Carriage & Wagon department as well as the Loco department. Although the applicant's claim is that he was appointed as a Gangman on regular basis in the year 1973, he has not produced any materials to establish the same. Prima-facie we have no reason to disbelieve the contentions of the respondents that he was engaged as substitute Gangman on 1.9.1973 and was regularised on 27.4.77 and his category was changed as Loco cleaner on bottom seniority vide order dated 7.7.79. Furthermore, from the applicant's un-dated representation, which was forwarded by the respondents on 23.4.76, it is clear that the applicant sought change of category from Gangman to Loco cleaner of his own accord, and the applicant has failed to produce any material to indicate that he was recruited against the 10% annual intake on which he relies, Vide paragraph 4.3 of his OA.

7. The applicant has cited the case of one Deen Dayal, whose category was also changed from Gangman to Loco cleaner, and was given the benefit of counting 50% of his seniority. Applicant's counsel Shri B.S.Mainee has alleged that the applicant has been subjected to hostile discrimination qua Deen Dayal, but in the respondents letter dated 22.7.88 (Annexure A-IV) it has been clearly stated that Shri Deen Dayal's category was changed from Gangman to Loco cleaner in the Carriage and Wagon Department against 10% annual intake and he was thus entitled to the benefit of counting of 50% of his seniority. Furthermore, the respondents letter dated 30.11.1979 annexed with the MP No. 2201/93 filed on 2.8.93, clearly indicates that category of Deen Dayal had been changed from Gangman to Loco cleaner against 10% annual intake, whereas in the

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applicant's case, as stated above, he himself sought a change of category from Gangman to Loco Cleaner and the respondents letter dated 29.4.76 clearly states that this change in category was subject to various conditions including his acceptance of bottom seniority as per the extant rules. There was no mention in that letter of his being recruited against 10% intake. This is further borne out by the respondents' subsequent letter dated 7.7.79, which also clearly states that the applicant's change of category was being allowed subject to his being placed at the bottom seniority as Loco cleaner, and there is no mention of his being recruited against 10% annual intake in that letter either. If the applicant had any grievance, he should have agitated the matter at that stage itself but there are no materials to indicate that he did so.

8. Under the circumstances, the applicant cannot claim that he has been subjected to hostile discrimination viz-a-viz Shri Deen Dayal, in whose case it has been explicitly stated that his change of category was against 10% annual intake.

9. In the result, both on merits as well as on the grounds of jurisdiction & limitation u/s 20 & 21 of A.T.Act, we see no reason to interfere in this matter. The OA fails and is dismissed. There shall be no order as to costs.

Lakshmi  
(Smt. Lakshmi Swaminathan)  
Member (J)

Adige  
(Shri S.R. Adige)  
Member (A)

NA.