IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application Nos. 166/2009, 167/2009, 279/2009, 280/2009, 281/2009 & 282/2009

Date of decision: 05.11.2012

CORAM

Hon'ble Mr. G.Shanthappa, Judicial Member
Hon'ble Mr. B K Sinha, Administrative Member

OA 166/2009

Indra Singh Mena S/o Shri Harnath Singh Meena,
Aged about 46 years resident of L-61-C Dhobighat,
Abu Road at present employed on the post
Of Assistant Loco Pilot (3050-4590) under
Chief Crew Controller, North Western Railway,
Abu Road. ...Applicant

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Vinod Kumar S/o Raja Ram, Loco Pilot (Goods)
Through Chief Crew Controller,
North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)

OA 167/2009

Bhagwati Lal Parmar S/o Shri Ram ji,
Resident of Eklavya Colony, Dudhiya Ganesh ji
Malla Talai, Udaipur at present employed
On the post of Assistant Loco Pilot(3040/4950)
Under Chief Crew Controller, Udaipur, North Western
Railway....Applicant

(By Advocate Mr. J.K.Misra)

Vs.

1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Chandra Shekhar S/o Nathu Lal, Loco Pilot (Goods)
Through Chief Crew Controller,
North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)
By Advocate Mr. S.K.Malik for R4)

OA 279/2009

1.Jassu Bhai Meena S/o Moti Bhai Meena,
At present employed on the post of Assistant
Loco Pilot (3050-4590) under Chief
Crew Controller, North Western Railway,
Abu Road.

2. Manohar Singh Meena S/o Harphool Singh
At present employed on the post of Assistant
Loco Pilot (3050-4590) under Chief Crew Controller,
North Western Railway, Abu Road.

3.Ram Raj Meena S/o Ram Prasad Meena
At present employed on the post of Assistant Loco
Pilot (3050-4590) under Chief Crew Controlelr,
North Western Railway, Abu Road.

(through Shri Jassu Bhai Meena, Qr.No.L.146E, Near Post Office,
Gandhi Nagar, Abu Road)

(By Advocate Mr. J.K.Mishra)

Vs.

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1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Praveen Meena S/o Shri Prabhu Shanker, Loco Pilot (Goods)
Through Chief Crew Controller,
North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)
(By Advocate Mr. S.K.Malik for R4)

OA 280/2009

Shanti Lal S/o Shri Mohan Lal
Resident of Village Meena Ka Khera, Mavli Jn.
Post Lopra, Udaipur at present employed
On the post of Assistant Loco Pilot
(3050-4590) under Chief Crew Controller,
Udaipur, North Western Railway. ....Applicant

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Chandra Shekhar S/o Nathu Lal, Loco Pilot (Goods)
Through Chief Crew Controller,

North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)
(By Advocate Mr. S.K.Malik for R4)

OA 281/2009

Jagdish Prasad, S/o Roop Chand,
Resident of Raiwlay Qtr.No.44, D
Rana Pratap Nagar, Pokar Chouraya,
Udaipur at present employed on the
Post of Senior Assistant Loco Pilot
(5200-20200) under DME(P) through
Chief Crew Controller, Udaipur,
North Western Railway. ....Applicant

(By advocate Mr. JK Mishra)

Vs.

1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Baldev Kanaujia S/o Sannu, Loco Pilot (Goods)
Through Chief Crew Controller,
North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)
(By Advocate Mr. S.K.Malik for R4)

OA 282/2009

Madan Lal S/o Shri Himmat Ram,
Resident of behind Nehru Hostel, Azad Nagar,
At present employed on the post of Senior
Assistant Loco Pilot (5200-20200) under DME(P)
Through Chief Crew Controller, Udaipur
North Western Raiwlay. ...Applicant

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India, through the General Manager,
North Western Railway, Jaipur.

2. Divisional Raiwlay Manager (Est.)
North Western Raiwlay, Ajmer Division,
Ajmer.

3. Divisional Mechanical Engineer (P)
North Western Railway, Ajmer Division,
Ajmer.

4. Mahendra Singh S/o Bhanwar Lal, Loco Pilot (Goods)
Through Chief Crew Controller,
North Western Railway,Abu Road.
....Respondents

(By Advocate Mr.Salil Trivedi (for R1 to 3)
(By Advocate Mr. S.K.Malik for R.4)

ORDER

Per: B K Sinha, Administrative Member

The above OAs arise from a common cause of action, follow common arguments and have prayed for common relief. The facts of the case being the same they have been heard together and are being disposed of by a common order. OA 196/2009 is taken as the leading case and the facts of that case are mentioned in this order.

Releif(s) sought:

(i) That the complete selection proceedings including the ACRs in respect of the applicant as well as juniors from Sl.No.35 to 42 in the impugned panel Annexure.A1 dated 25.6.2009 for the period considered may be called for perusal of this Hon'ble Tribunal.

(ii) That the respondents may be directed to consider the case of applicant for empanelment as per rules in force and the impugned order Annexure.A1 may be ordered to be modified by interpolating the applicant at appropriate place and applicant be allowed all consequential benefits.

(iii) That the impugned order Annexure.A2 may also be declared as illegal and same may be quashed to the extent of illegality.

(iv) ***That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in he interest of justice.***

(v) ***That the cost of this application may be awarded.***

Case of the applicant:

2. The facts of the case briefly stated, are that the applicant Inder Singh Meena was appointed on the post of Misc. Khalasi on 8.10.1987. He earned his promotion in the due course and was subsequently promoted to the post of Assistant Loco Pilot in the grade of Rs. 3050-4590 with effect from 13.1.2000 and posted at Gandhidham. He was, thereafter, transferred to Abu Road in December, 200 and has continued there ever since in the same grade. The DRM, NWR, Ajmer Division, Ajmer who figures as R2 in the instant case notified 46 vacancies for promotion by selection to the post of Loco Pilot (Goods) in the pay scale Rs. 9300-34800 plus grade pay of Rs. 4200 vide communication dated 18.12.2008 [A3]. Out of these 46 vacancies, 12 posts were reserved for SC and 12 for ST candidates, rest going to the general category. The applicant admittedly belongs to the ST category and was further admittedly called for selection in the written test and had been declared successful vide letter dated 1.6.09 [A4]. A total of 93 candidates were declared to have qualified in the examination with the name of the applicant figuring at Sl.No.75 in order of seniority. The applicant further submits that the post of Loco Pilot (Goods) is a selection post which is to be filled up in a positive act of selection through written test. One is required to obtain a minimum of 60% marks in written examination and 60% marks in other components as prescribed under Para 219(g) of the IREM Vol.I. In the instant case the provisional panel of 42 candidates was issued vide letter dated 25.6.2009 in which the name of the applicant was not there while 8 of his juniors Assistant Loco Pilots in the ST category from Sl.No.35 to 42 including the R4 have found place. The applicant asserts that his service record has been impeccable and there is nothing against him. He is senior to 8 of the ST candidates who figure in the impugned panel dated 25.6.2009.

3. Aggrieved by the above order, the applicant moved representation through proper channel vide his letter dated 27.6.2009 [A6] stating therein that he should have been included in the panel as nothing had been found against him. While there was no response to his afore representation the respondent No.2 issued the promotion/posting orders vide his letter dated 26.6.2009 on the basis of provisional panel dated 25.6.2009. Applicant asserts therein that the persons at Sl.No.35 to 42 are juniors to the applicant and including respondent No.4. The applicant alleges, extraneous reasons for his being omitted from the list prepared on 25.6.2009 and his juniors being included. Out of 12 posts reserved for the ST category 10 persons had been empanelled and one post is still remaining against the ST quota reserved under the orders of the court. He further alleges that the action of the officials is whimsical and arbitrary and not sustainable before this Tribunal.

Case of respondents:

4. The official respondents have filed their counter affidavit while the R4 has not appeared in this case nor has he filed any counter affidavit against the application. In other OAs mentioned above, even though counsels appeared, no counter affidavit filed by the party respondents. In their reply the official respondents have submitted that admittedly 46 vacancies of Loco Pilot (Goods) were notified along with eligibility vide their notification dated 18.12.2008. The name of the applicant was placed at Sl.No.117. Out of these 46 vacancies 22 vacancies earmarked for general candidates, 12 for SC and 12 for ST candidates. Subsequently this notification was modified vide order dated 26.2.2009 vide which 25 posts were earmarked for general candidates, 10 for SC and 11 for ST employees. The eligibility list was published vide order dated 26.2.2009 [R1]. Admittedly the applicant, an ST employee and other 32 ST employees appeared in the written examination, out of which applicant and 26 other ST employees were declared to have passed the written examination. From amongst the candidates, the following appeared at S.No. 16,21,24,47,55,70,71,72,74,75,76,78 to 93 were placed

on the panel dated 25.6.2009 [A4] against general vacancies at Sl.No.10,12,&21 in Annexure.A1. The respondents have further submitted that all the 11 posts of Loco Pilot (Goods) earmarked for ST employees and those at Sl.No.55,70,79,81,82,84,85,87,88 ad 90[A4] and Sl.No. 33 to 42 in AI were declared to have qualified. One post of ST vacancy has been kept vacant for one Inder Sen Mahavar as per the direction of the CAT, Jodhpur Bench. They further states that the required marks for qualification is 60% in aggregate ie., 60% in written and 60% for the other component. 4 of the ST employees, senior to the applicant, who had been placed at Sl.No. 47, 71,72 and 74 in A4 and who had also qualified the written examination along with the applicant did not find place in the panel for selection to the post of Loco Pilot (Goods) because they failed to obtain 60% marks in aggregate in the panel declared on 25.6.2009. Some of the junior employees to the applicant who had qualified in the written examination were able to score 60% marks and were placed in the panel while the applicant and 4 employees senior to him in the ST list did not figure in the panel. The respondents further allege that the applicants had not disclosed the full facts before the Tribunal as there were other employees who were necessary parties but who has been deliberately omitted. The main plank of the applicant's case is that after having qualified in the written test his name was not included while his juniors were included. However, he has omitted to mention that these were selection posts and obtaining 60% marks in the aggregate was mandatory. Hence, the respondents have pleaded strongly for the rejection of the OA.

5. In the rejoinder application the applicant has alleged bias on part of one Naresh Mishra, Crew Controller who had down-graded his ACRs. The applicant claims that the entry in the ACR which is instrumental in his not getting selected is liable for communication and uncommunicated ACRs do not have any impact. The applicant has further challenged the ACR of one Praveen Meena on the ground that he had not worked for 90 days which should not have been written. The applicant

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also challenges that the marks of seniority should not be added while preparing the select panel. The applicant further says that 60% in aggregate is 48 out of 80 marks but the respondents have taken into consideration 60 out of 100marks.

6. The learned counsel for the parties has by and large followed the written submissions except for the allegation of bias raised by the applicant against Naresh Mishra in the rejoinder.

7. Having listened the arguments of the respective parties and after having gone through the pleadings the following facts in issue emerge:

(i) What is the process of selection prescribed by the respondent organization for the category of Loco Pilot (Goods) and whether there is any procedural irregularity/infirmity?

(ii) Whether there has been any bias operating against the applicant as has been alleged in the RA?

(iii) What relief, if any, can be granted to the applicants?

7. The other facts being admitted, we take up straight away the first issue for consideration. The notification inviting application for the post of Loco Pilot (Goods) in the pay scale Rs. 9300-34800 plus grade pay Rs. 4200 in the Mechanical Department of Ajmer Division was issued vide notification dated 18.12.2008. Out of this there was a reservation of 25% for the SCs of which 13 can be filled up and were in the process of recruitment. Likewise there were 13 reserved posts for the STs against which only one person had been working and 12 posts to be filled up. The same notification further states that as per OA 151/2006 and OA 25/2007 the entire process of selection would remain provisional till final orders in the aforementioned OAs. We have further perused Rule 219 of IREM which for easy reference and elucidation is reproduced below:

219. Procedure to be adopted by Selection Board

(a) When a Selection post is to be filled, the authority empowered to constitute a Selection Board shall direct to the Board to assemble and make recommendations. It shall also nominate the Officer who shall act as the Chairman of the Board. The responsibility for selection will be of all members.

(b) An officer of the concerned Department who is also a member of the Selection Board must be authorized to set the question paper for written test, held as part of the selection for determining the professional ability. Where possible another officer of the concerned Department who is also a member of the Selection Board should be nominated to evaluate the answer books ensuring, however, that the answer books are invariably evaluated by a Member-Officer of the Department for which Selection is held. The test should be conducted on a confidential system with Roll numbers.

(Railway Board's letter No. E(NG)I/95/PM1/14 dt. 3.3.98 and 07-08-03)

c) (i) : In the written test held as part of the selection for promotion to the posts classified as 'Selection', objective type questions should be set for about 50%(in the range of 45% to 55%) of the total marks for the written test.

(ii) The provisions at (i) above will be applicable to selections in all Departments except Accounts Deptt.

(Railway Board's letter No. E(NG)I-2000/PM1/41 dt. 08.03.2002(acs no.130), 7.8.03 (acs 150)and E(NG)I-2006/PM1/18 dt. 30.08.2006(acs no.186)]

(iii). The question paper for the written test should have practical bias i.e. it should be designed to test the ability of the candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge.

(Authority: Railway Board's letter No. E(NG)I-2004/PM1/25 dt. 6.07.2005-acs no.173)

(d) Moderation of results by way of awarding grace marks to candidates shall not be resorted to without the authority of the Selection Board or the authority competent to accept the recommendations of Selection Board. No grace marks shall be allowed in individual cases.

E(NG) I/67 PM 1-21 dt. 25-2-71 and E(NG) I-84-PM 1/6 dt. 30-3-85

(e) Before the Selection Board assembled to make the selection, the papers connected with the proposed selection, the names of the candidates to be considered, the confidential reports, if any on such candidates and other relevant data concerning them shall be circulated for the information of the members of the Board as also the qualifications prescribed for the particular post under consideration.

(f) The Selection Board will examine the service record and confidential reports (if kept) of the staff eligible. A single evaluation sheet should be prepared to assess the candidates under the different headings of personality, address, leadership, etc to be signed by all members of the Selection Board. Corrections in the evaluation sheet, if any, should be attested by all the members of the Selection Board. The members nominated on a Selection Board should be advised clearly that there should not be any cuttings and over-writings in the proceedings of the Selection Board and serious objection of any cuttings and over-writing will be taken.

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(Railway Board's letter Nos. E(NG)I-99/PM1/15 dt. 26.7.99).

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of selection Board the factors to be taken into account and their relative weight are laid down below :

E(NG) I-69/PM 1-126 dt. 18-9-69

	Factors/Headings	Maximum Marks	Qualifying Marks
(i)	Professional ability	50	30
(ii)	Record of service	30	-
(iii)	Seniority	20	-
	Total	100	60

Note:- (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from examining CRs and other relevant records

E(NG) I-72/PM 1/192 dt. 27-6-73

(ii) Candidates must obtain a minimum of 60% marks in professional ability and 60% marks of the aggregate for being placed on the panel. In a few cases where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35% marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test.

E(NG) I/72/PM-1/158 dt. 12-12-73 & E(NG) I/83/PM 1/65 dt. 5-12-1984, E(NG)I-2000/PM1/41 dt.07.08.03 (ACS No.150) , E(NG)I-2007/PM1/10 dt. 6.11.2007)acs no. 196

(iii) The proviso in the Note (ii) above will not be applicable in respect of the ex-cadre posts where the employee retains his lien in the parent cadre and seeks advancement therein.

E(NG)1-98/PM1/11 dt. 16.11.98(ACS No. 66), E(NG)1-98/PM1/15 dt. 26.07.99 (ACS No. 84)

(iv) In the case of selection for promotion as Motorman, distribution of marks amongst various headings in lieu of headings appearing in the table below para 219(g) shall be as follows:-

	Factors/headings	Maximum Marks	Qualifying Marks

(1)	Professional ability	50	30
(2)	Record of service	15	-
(3)	Seniority	15	-
(4)	Aptitude Test	20	Minimum cut off as may be decided by RDSO
		100	60

(Authority :- Railway Board's letter No. E(NG)1-2006/PM1/4 DT. 22.03.06 and 22.09.2006)-acs no.188

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured, he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by a warding mere marks both for record of service and for professional ability.

(i) The names of selected candidates should be arranged in order of seniority but those securing a total of 80% or more marks(ACS NO.111) will be classed as out□standing and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility. (ACS No. 66)

E(NG) 1/76 PM 1-142 dt. 25-7-79, 30-10-79

(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments and where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-

(Authority: Railway Board's letter No. E (NG) I-2008/PM7/4 SLP dt. 19 .06.2009)□ACS No.209

(i) All eligible staff irrespective of the depart□ment in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be sub□jected to selection which should consist of a written test and in a few cases viva-voce test also as indicated in sub para (a) of para 215. The various factors of selection and their relative weight will be as indicated below:- (ACS NO. 66 &152)

Factors/headings		Maximum Marks	Qualifying Marks
(1)	Professional ability	50	30
(2)	Record of service	30	-
	Total	80	48

NOTE:- (i) The assessment under heading (2) above will be governed by the provisions contained in Note (i) below para (g) above.

(ii) In the case of selection for promotion to the post of Asstts. Loco Pilots (Diesel/Electric) and ASMs, the distribution of marks amongst various headings in lieu of headings in the table below clause (i) of sub-para(j) shall be as follows:-(ACS NO. 149 &183)

	Factors/headings	Maximum Marks	Qualifying Marks
(1)	Professional ability	50	30
(2)	Record of service	30	-
(3)	Aptitude Test	20	Minimum cut off as may be decided by RDSO
		100	60

(Authority Railway Board letter No.(E(NG)I2002/PM1/31 dt. 22.08.03) & .(E(NG)I-2006/PM1/4 dt. 22.03.06)

(ii) In a few cases where both written test and viva-voce test are held to assess the professional ability of the candidates, all those who secure not less than 60% marks in the written test should be called for viva-voce test.

(Authority Railway Board letter No.(E(NG)I-200/PM1/41 dt. 07.08.03) acs no.150

(iii) The final panel should be drawn up in the order of merit based on aggregate marks of 'Professional ability' and 'Record ofservice'. However,

a candidate must secure a minimum of 60% marks in 'Professional ability' and 60% marks in the aggregate, for being placed on the panel. There will be no classification of candidates as 'Outstanding'.

(Authority: Railway Board's letter No. E (NG) l-2008/PM7/4 SLP dt. I 9 .06.2009)□ ACS No.209

(Para No.219(g),(i) and (j) Corrected as per ACS. NO. 46,66,84,111,149,150,150,153,171,183 , 186 and 209)

(k) The list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh SelectionBoard at a higher level, or issue such other orders as he considers appropriate.

(1) After the competent authority has accepted the recommendations of the Selection Board, the names of candioates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel.

E(NG) 1-67 PM 1-47 dt. 5-2-69

(m) SELECTION OF PERSONS ON DEPUTATION ABROAD. The panel should be finalized without waiting for the employees who are on deputation abroad. On return of the employee from abroad, if it is found that any one junior to him has been promoted on the basis of a selection in which he was not called because of his being abroad, he may be considered in the next selection and if selected, his seniority may be adjusted vis-a-vis his juniors. In case such an employee is declared outstanding in the next selection, he should be interpolated in the previous panel in accordance with the seniority and gradation in the subsequent selection.

E(NG) I/77/PM 1-269 date. 3-5-80"

8. From the above it is clear that the selection for the post is made through two stages progress, one involving written examination in which the qualifying marks under Rule 219(g) 30% out of 50 or 60%. Then 30 marks have been allocated for record of service and 20 marks for seniority. Of which the eligible candidate has to score 30 marks out of 50 or 60% in aggregate. The applicant in his rejoinder application has challenged the process of including seniority as point of reckoning in the process. However, this has not been included in the relief being sought, for this a separate OA has to be filed. It is also significant to note that the applicant has

nowhere challenged the provisions of Rule 219 or the fact that the applicant had not been able to secure the required 60% marks. The respondents have rightly pointed out that 4 persons senior to the applicant who qualified in the written examination could not secure the eligible of over 60% did not figure in the panel while 8 persons junior figured in the panel. One post of ST category has been kept vacant under the orders of the CAT, Jodhpur Bench. We further find merit in the contention of the respondents that not all persons who could be adversely affected by grant of the reliefs prayed for have been impleaded in this OA as parties. Rightly such persons should have also been impleaded as respondents which have not been done in the instant case. In sum and substance, we are of the firm conclusion that there is nothing which the applicant has been able to adduce to challenge the process or integrity of the process of selection which continues to hold good.

9. In this respect, recently vide order dated 26.9.2011 a Division Bench of the Jaipur Bench of this Tribunal in ***OA 279/200 (Ram Chandra Kurdia) decided on 26.9.2011*** considered the same issue involved as in this case also and held as under.. In that case the panel dated 25.6.2009 which is impugned in the afore stated cases were under challenge and while dismissing the case the Hon'ble Bench held as under:

> ***"9. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record, as alleged by the applicant that he being eligible appeared in the written test, declared pass and his junior has been given promotion on the post of Loco Pilot (Goods) whereas the applicant was ignored. On the other hand, the respondents submitted in the reply that for promotion to the post of Loco Pilot (Goods), it is necessary to obtain 60% marks in aggregate and admittedly even the seniors and the applicant have not been able to obtain 60% aggregate marks and, therefore, the persons who secured 60% marks or above were placed in the panel and were rightly given promotion on the post of Loco Pilot(Goods).***
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> ***10. It is also settled proposition of law that once a candidate appeared in the selection and declared unsuccessful cannot raise objection with regard to the selection process, as has been done by the applicant. In the selection, the applicant could not secure the required percentage of marks, as such, he could not find place in the panel.***

11. Thus, the orders dated 25.6.2009 (Annexure.A2) and 26.6.2009 (Annexure.A1) are perfectly legal and valid and we find no illegality in these orders, as such, no interference of this Tribunal is required. Consequently the OA being bereft of merit fails and is hereby dismissed with no order as to costs."

10. Regarding the second point, the allegation of bias on behalf of Naresh Mishra was not included in the original application and has only come out in form of rejoinder. Moreover, if bias is being alleged it was wand on part of applicant to implead Naresh Mishra as a party and he should have been given an opportunity of presenting his own case. The Hon'ble Supreme Court has held in ***S.Parthasarathy Vs. State of Andhra Pradesh, 1974(1) SLR 427 as under:***

"14. The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggine (1895) 1 QB 563, Rv. Sussex JJ ex.p Mc. Carthy (1924 1 KB 256, Cottle v. Cotle (1939) 2 ll ER 535, R.v. Abingdon JJ e.p. Cousins (1964) 108 SJ 840. But in R v. Camborn JJ, ex.p. Pearce (1955) 1 QB 41 at p.51 the Court after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

15. The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively or upon the basis of the impressions that might reasonable b left on the minds of the party aggrieved or the public at large.

16. The test of "likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it. Whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seem to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry, nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough, There must exist circumstances from which reasonoble men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord

Denning, M.R in Metropolitan Properties Co (F.G.C) Ltd. V. Lannon (1968) 3 WLR 694 at p.707-etc). We should not, however, be understood to deny that the court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."

11. In another case, ***Union of India v. Bikash Kuanar,(2006) 8 SCC 192 ,*** the Apex Court has held as under:-

3. Brief facts of the case are as follows: The respondent Bikash Kuanar's father was working as an Extra-Development Delivery Agent (for short "EDDA") in Narangochha B.O. and, on his superannuation a vacancy arose in the said post. The respondent herein had applied for the said post. In the process of selection, the respondent was selected and posted vide order dated 2-7-1998. Pursuant to the said order, the respondent joined the service. The respondent, to his utter surprise and astonishment, on 2-1-1999 received a letter, wherein it was stated that the selection vis--vis the appointment of the respondent was reviewed and, thereafter, his appointment had been cancelled.

4. The respondent, aggrieved by the said order dated 2-1-1999, filed an application before the Central Administrative Tribunal. A counter-affidavit was filed by the appellants before the Tribunal. It was stated in the counter-affidavit that an open advertisement was issued and in response to the same, the respondent herein and two other candidates, namely, Pitamber Majhi and Seshadeba had applied for the said post. One Pitamber Majhi secured 348 marks in the matriculation examination as against 298 marks secured by the respondent.

5. According to the appellants, both these candidates Pitamber Majhi and Seshadeba were wrongly rejected on wholly untenable grounds, therefore, the higher authority in the department had reviewed the case of the appointment of the respondent and opined that the appointment of the respondent to the said post was illegal and, consequently, cancelled the same. This, of course, was done after taking into consideration the representation of the respondent.

14. When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice. In this view of the matter, we are of the opinion that the said Pitamber Majhi by reason of higher marks obtained by him in the matriculation examination also cannot be said to be a better candidate than the respondent herein. In this

view of the matter, we do not find any fault with the impugned judgment of the High Court.

15. The Division Bench of the High Court, in our considered view, correctly applied the law, which has been crystallized in a number of decisions of this Court.

16. Indisputably, the respondent has fulfilled all the essential terms and conditions for the appointment to the said post. The respondent alone had submitted all necessary and required documents before the date prescribed by the appellants. It may also be pertinent to mention that at the time of selection the respondent was the only one who had the experience of working continuously on the said post for a period of one-and-a-half years. Perhaps, all these factors cumulatively persuaded the authorities concerned to select the respondent to the said post.

11. On the above basis, we do not find substance in the allegation of there being any bias or even procedural irregularities. The respondents have carefully followed the process and have been satisfied the Tribunal on this point.

12. In view of the afore mentioned arguments we find that the provisions of Rule 219 of IREM have been followed by the respondents. On the other hand the applicants have failed to make out any case to establish bias or departure from the procedures. The main plank of the applicants' argument was that as juniors have been promoted over their heads while they have also qualified in the written examination, their rights of natural justice and equality under Articles 14 and 16 stands violated. However, the respondents have been able to well establish that the applicants did not qualify in the selection process inasmuch as they failed to secure 60% marks in aggregate. As such we have no hesitation to disallow this OA. All the above OAs are disallowed. Parties must bear their own costs.

13. Copies of this order be placed in the above mentioned OAs.

COMPARED & CHECKED

—Sd—
(B K SINHA)
ADMINISTRATIVE MEMBER

—Sd—
(G SHANTHAPPA)
JUDICIAL MEMBER

pps

12-1-12