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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

ORIGINAL APPLICATION NO. 103/2009

Order Reserved on: 24.2.2012

Date of order: 21.3.2012.

CORAM

***HON'BLE MR. JUSTICE S.C. SHARMA, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER***

Naresh Kumar Mishra
S/o Shri Mahipal Mishra, aged 40 years
Resident of Bangalow No.L/65A, Rly.Colony,
Abu Road,District Sirohi (Rajasthan)
Presently working on the post of
Chief Controller at NWR, Abu Road.Applicant

(By Advocate Mr.S.K.Malik)

Vs.

- 1 Union of India, through the
General Manager, North Western Railway,
Jaipur.
- 2 Divisional Railway Manager,
North Western Raiway, Ajmer Div. Ajmer.
- 3 Divisional Railway Manager (Estt/P)
North Western Raiway, Ajmer Divn.Ajmer.
- 4 Rajendra Badhana, Chief Power Controller
DRM Office, North Western Railway
Ajmer.Respondents

(By Advocates Mr. Salil Trivedi for R. 1 to 3
Mr. A.K.Kaushik for R. 4.)

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ORDER

Per: Hon'ble Mr. Justice S.C. Sharma, Judicial Member

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The instant OA has been instituted for the following reliefs:

- (i) By an appropriate writ, order or direction, impugned order dated 20.4.2009 (Annexure.A/1) qua the respondent No.4 be declared illegal and be quashed and set aside.
- (ii) By an order or direction, if during the pendency of this OA, any promotion order in pursuance of Annexure A/1 qua respondent No.4 is passed the same be declared illegal and be quashed and set aside.
- (iii) By an order or direction, respondents may be directed to include the name of applicant in the panel by deleting the name of respondent No.4 at Annexure.A/1 and further promote him to the post of Loco Inspector scale4 6500-10500 from the date persons placed in the panel, so promoted with all consequential benefits including arrears of pay and allowances etc.
- (iv) Any other relief which is found just and proper be passed in favour of applicant in the interest of justice.

(2) Pleadings of the parties in brief are as follows. It has been alleged by the applicant that he was initially appointed on the post of Diesel Assistant, after due selection, with effect from 28.6.1988, in the scale of Rs. 950-1500. In due course he was promoted, and lastly he was promoted on the post of Passenger Driver in the scale of Rs. 5500-9000 with effect from January, 2003. After screening amongst loco pilots, the applicant was ordered to work on deputation basis on the post of Chief Crew Controller with effect from January, 2007. When respondents notified three vacancies for selection to the posts of Loco Inspector/Safety Councillor in the scale of Rs. 6500-10500 vide letter dated 1.7.2008, as the applicant was fulfilling all

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the eligibility criteria, as per seniority he was called for the selection vide letter dated 4.8.2008. It has been submitted by the applicant that the eligibility list was issued contrary to Para 215 (e) of IREM, 1989, since, a against the three vacancies, only nine persons should have been called. After written examination, the respondents declared the result, and accordingly 12 persons were declared to have passed the selection vide letter dated 24.10.2008, and in that letter the applicant's name was found placed at Sl.No.4, and name of respondent No.4 found place at Sl.No.6. In the eligibility list Annexure.A.3, the name of applicant was placed at Sl.No.8, and the name of respondent No.4 at Sl.No.12. It was submitted that contrary to the provisions of Para 215(e) and Para 219(j) of the IREM, the name of the respondent No.4 has been included in the panel vide impugned order dated 20.4.2009. A representation was submitted by the applicant against that panel. The provisions of Para 219(j) of IREM had been violated, and hence this was challenged in the representation. It was further submitted that the respondents are adamant to promote respondent No.4 for the reasons best known to them, in clear violation of the statutory provisions. Hence the

OA.

(3) The Official respondents 1 to 3 and private respondent No.4 contested the case, and filed separate counter affidavits. It has been alleged by the official respondents that the post of Loco Inspector/Safety Councillor is a general selection post, and the applications were invited from eligible employees of different categories who satisfied the eligibility condition for appearing in the selection for the posts of Loco Inspectors and to appear in



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the written examination. The applicant as well as other eligible employees submitted their applications in pursuance of notification dated 1.7.2008. After submission of the applications by applicant and others, respondents scrutinized the applications submitted by eligible employees from different categories, and, thereafter, a list was published as has been shown in Annexure.A.3. It was further submitted that Para 215(e) of IREM is not at all applicable, and has no relevance to the notification dated 1.7.2008. The notification was issued as per the directions of the Railway Board letter dated 16.11.1998 (Annexure R.1). It was further alleged that the selection to the posts of Loco Inspectors under notification on 1.7.2008 was a general selection, and under such general selection, applications were invited from all eligible employees of different categories. It was submitted that para 215(e) applies only when there is a normal channel of promotion, and selections are made from the lower cadre to the higher cadre, ie., in a normal channel of promotion, but in the present case, the Railway Board's letter dated 16.11.2008 (Annexure.R3) shall be applicable, which was issued on the basis of the judgment of the Hon'ble Supreme Court in the case "M.Ramjayaram Vs.General Manager, South Central Railway and other: 1996 SCC (L&S) 890. Written examination was conducted on 9.9.2008, and in the written examination 12 employees including the applicant were found suitable vide order dated 24.10.2008. Name of the applicant, in the result of the written examination, was placed at Sl.No.3 and that of respondent No.4 at Sl.No.6. It was submitted that the selection was not conducted as per the provisions of Para 215 (e) and Para 219(j) of IREM,

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and the applicant is simply trying to confuse the Tribunal. In view of the notification, the selection was conducted as a general selection, and not a selection under normal channel of promotion, and the panel which was issued on 20.4.2009 (Annexure.AI) is still in accordance with rules, and respondent 4 and others were accordingly promoted. It had been provided in the Railway Board's letter dated 16.11.1998 that an employee who secured more than 80% marks be placed at the top of the panel in the order of seniority. Since Shri Muktiar Hussain Gauri and Shri Rajendra Badhana (private Respondent R/4) were classified as outstanding, their names were placed at the top of the panel in the order of seniority. Further, one Shri Sanjay Kumar Nirwan, who was senior to the applicant, and had secured more than 60% in aggregate, was placed at Sl.No.3, and hence the name of the applicant could not find place in the final panel. It was submitted that the Railway Board's letter dated 11.10.1979 is not applicable in the present case. Whatever has been alleged in the OA has also been denied.

(4) On behalf of the Private Respondent No.4 Rajendra Bhadana, a separate counter reply has also been filed. We have perused the said counter reply filed on behalf of Respondent No.4, and we are of the opinion that Respondent No.4 has merely supported the stand of the official respondents R/1 to R/3, and therefore it is not necessary to repeat the same facts here once again.

(5) We have heard Shri S.K.Malik, learned Advocate for the applicant, and Shri Salil Trivedi, learned Advocate for the respondents. From perusal of the pleadings and of the facts, it is evident that it is an admitted fact that



the respondents had issued notification Annexure.A/2 dated 1.7.2008 to conduct selection in order to fill up three posts of Loco Inspectors in the scale of Rs. 6500-10500. It was provided in the notification itself as to how the selection shall be done. It has also been mentioned in the notification as to who will be eligible to participate in the selection. It had been specifically provided that the employees in the following categories can participate in the selection:-

- (i) Mail/Express Loco Pilots – Rs. 6500-9800
- (ii) Passenger Loco Pilots – Rs. 5500-9000
- (iii) Goods Train Loco Pilots – Rs. 5000-8000.

It was also provided that the Goods Train Loco Pilots in the scale of Rs. 5000-8000 and in the higher scale of Rs. 6500-9800, must have put in three years foot plate service, and it was a condition precedent to their participating in the selection.

(5) It has been alleged by the applicant that in terms of the notification issued by the respondents, he was fulfilling the eligibility criteria for selection as per his seniority as Loco Pilot. Along with other eligible candidates, the applicant was also called for participating in the selection, and the written examination was conducted on 9.9.2008. The result of the written examination was declared on 24.10.2008, and 12 candidates were declared passed in the written examination, in which the name of the applicant appeared at Sl.No.4, whereas the name of the Private Respondent No.4 appeared at Sl.No.6. Annexure.A.3 is the eligibility list, and in that list the name of the applicant appeared at

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Sl.No.8, whereas the name of respondent No.4 appeared at Sl.No.12, and it was according to their seniority positions in the cadre of Loco Pilots. The applicant has contended that the respondents were required to prepare the panel as per Para 215(e) and Para 219(j) of IREM, but the respondents prepared the panel in violation of the above provisions, and, as a result, Private Respondent No.4, who was much junior to the applicant, was placed in the panel above the applicant, at Sl.No.2, and in doing this the respondents committed illegality in preparing the panel.

(6) On the other hand, the stand of the respondents is that the post of Loco Inspector is a general selection post, and all the staff who possessed the eligibility criteria, and were working in different categories, were therefore eligible to attend the selection. Hence, it is not correct that the candidates only to the extent of three times of the number of posts notified should have been called for written examination. All the eligible candidates, who are willing to participate in the selection, were called to participate in the selection. It has also been argued that since the selection was a general selection, hence Para 215(e) and Para 219(j) of the IREM are not applicable in the present case. Rather, selection had to be conducted as per Railway Board's letter dated 16.11.1998 (Annexure R/3) which was issued in pursuance of the directions of the Hon'ble Supreme Court, and Annexure.A6, which has been filed as an extract of the Indian Railway Establishment Rules and on the strength of this document Annexure.A/6, it has been argued by the learned counsel for the applicant that provision has been made by the

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Railway Board to the effect as to who will be classified as outstanding, and how his seniority will be fixed, and he cited the following provision as a part of para (37) of the Establishment Rules in this connection:

“The Railway Board has clarified that the names of the selected candidates should be arranged in order of seniority; but those securing 80% or more marks will be classified as “Outstanding” and placed at the top in the order of their inter se seniority. However, the candidates classified as “outstanding” should not be allowed to supersede more than 50% of the number of their seniors in the total field of eligibility.” (B No.E(NG) II-79-PMI/275 dated 11.10.1979)

(7) Hence, it is seen that in view of the Railway Board's letter dated 11.10.1979, if an employee had secured 80% or more marks, he will be classified as outstanding, and he will be placed at the top in the order of their inter-se seniority, but a proviso has also been made for such classified candidates that the outstanding candidates should not be allowed to supersede more than 50% of the number of their seniors in the total field of eligibility and on the strength of this Railway Board's letter, the learned counsel for the applicant argued that, if a candidate has been classified as outstanding by securing 80% or more marks, then he can only supersede 50 percent of the number of his seniors in the total field of eligibility and in no circumstances he can be placed right at the top of the panel, and if this provision of the Railway Board's letter had been applied, then Respondent No.4 could not have gone above applicant. Moreover, it was submitted that in this connection, Para 219(j) will also be relevant, wherein it has been provided that “ the names of selected

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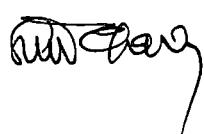
candidates should be arranged in the order of seniority, but those who have secured a total of 80% marks or more, will be classified as outstanding, and placed in the panel appropriately in order of their seniority, allowing them to supersede not more than 50% in the total field of eligibility". It was also submitted that it has been provided by Para 215(e) of the IREM that eligible staff upto three times of the number of staff empanelled only should be called for written/viva voce test, and the learned counsel placed reliance on these provisions.

(8) But the stand of the respondents is entirely different. Although the respondents have not disputed the provisions of Para 215(e) and 219(j) of the IREM but it has been pointed out that the applicant's version of these paragraphs is as the para 219(j) stood before its amendment following the orders of the Hon'ble Supreme Court in the above cited case, and it was further contested by the learned counsel for the respondents that the provisions of Para 215(e) are applicable only when there is a normal promotion from the lower scale to higher scale, But, in the present case, this provision has no relevance, because in the present case it was not a normal promotion, rather it was a general selection, and applications were invited from all the eligible candidates of different categories, and under these circumstances the Railway Board letter dated 16.11.1998 (Annexure R/3) which has since amended Para 219(j) (iii) shall be applicable. It has also been argued that this letter for selection was issued as per directions of the Hon'ble Supreme Court, and Annexure.R/3 is relevant to be considered, which has since amended Para

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219(j)(iii) as per the orders of the Hon'ble Apex Court, and the procedure as provided in the Railway Board's letter will alone be applicable in the present case.

(9) From a perusal of Annexure.A.2, notification dated 1.7.2008, it is evident that the notification was issued in order to fill up three posts of Loco Inspectors and it was a general selection, and this fact has also not been disputed by the applicant. Perusal of Annexure.R/3 RBE No. 263/98 dated 16.11.1998 shows that it was issued in pursuance of the directions of the Hon'ble Supreme Court in the case of M. Ramjayaram Vs. General Manager, South Central Railway and others, 1996(1) SC SLJ 536. Following the Apex Court directions, it has been provided in this letter that the final panel will be drawn up from amongst those secured 60% marks in the professional ability, and 60% marks in the aggregate, in the order of seniority, provided that those securing a total of more than 80% marks will be classified as outstanding, and placed at the top of the panel, in order of seniority. Hence, in supersession of the earlier Para 219(j), provision has now been made that if a candidate had secured 80 % or above marks, he will be classified as outstanding, and he will be placed right on the top of the panel, in the order of seniority, whereas earlier in Para 219(j) as it existed prior to the Apex Court judgment in the above cited case, it had been provided that those who had been classified outstanding could supersede only 50% of their seniors, whereas according to the directions of the Apex Court, those who secure



more than 80% marks will have to be classified outstanding, and placed right at the top of the panel.

(10) Placing reliance on this circular letter of the Railway Board, learned counsel for the respondents argued that as Respondent No.4 was classified as outstanding, and had secured more than 80% marks, he was placed at the top of the panel at Sl.No.2, as Sl.No.1 had secured more marks than even the Respondent No.4, and the person who had been placed at Sl.No.3 in the panel was senior to the applicant, and that is how three persons were selected against three posts, and the name of the applicant could not find place in the panel.

(11) We tried to scrutinize as to whether the provision of Para 219(j) (iii) as it stood before the Apex Court judgment shall be applicable, or the letter of the Railway Board dated 16.11.1998 (Annexure. R/3), issued in pursuance of the direction of the Hon'ble Supreme Court, according to which the Para 219(j)(iii) now stands amended shall be applicable. We have also perused the judgment of the Hon'ble Supreme Court in this connection, reported in 1996 SCC (L&S) 890 – M.Ramjayaram Vs. General Manger, South Central Railway and others. It will be material to reproduce the relevant portion of the judgment of the Hon'ble Supreme Court. *"In this case since the contesting respondents are not from the same unit but of different units Rule 320 stands excluded, weightage of 15 marks for seniority given to the respondents obviously is illegal. Therefore there is force in the contention of the appellant that his non-selection tantamount to*

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arbitrary exercise of power on the part of Respondents No. 1 & 2. We set aside the order of CAT, Hyderabad Bench in OC No. 1039/92 dated 21.3.1995. Respondents are directed to consider the selection according to rules and make appointments according to law." In the case before the Hon'ble Supreme Court, 15 percent marks were given on the basis of seniority, as per provisions of Para 219(g) of the IREM, but the law as has been laid down by the Hon'ble Supreme Court is that such weightage is applicable where the selection is from the same unit, but if the selection is from different units, then this weightage Rule stands excluded, and no weightage will be given on the basis of seniority. The letter dated 16.11.1998 (Annexure. R/3) was issued in pursuance of the direction of the Hon'ble Supreme Court, and it had been provided that it would be applicable if the notification was issued for filling up general selection posts i.e., those outside the normal channel of promotion, for which eligible staff of different categories/departments are called.

(12) In this Annexure R/3 the word used is 'different categories/departments'. We have tried to ascertain the meaning of "categories". In this connection, we have also perused Annexure A/2 notification issued by the respondents on 1.7.2008. From a perusal of this notification, it is evident as to who will be eligible for participation in the selection. Three categories of Loco Pilots have been provided, namely the Passenger Loco Pilots, Goods Train Loco Pilots and Mail/Express Loco Pilots. Learned counsel for the applicant argued that

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all these categories are not different categories, but they are the same category, in that they all belong to the Driver branch. But, at the same time from notification dated 1.7.2008, it cannot be said that it was a normal promotion. Because it is known that normal promotion has to be made from lower scale to higher scale within the same Cadre, and for giving promotion to the higher scale from the lower scale, different categories of employees drawing different scales shall not be eligible, but the employees of the same scale shall be eligible. In the present notification, Loco Pilots of different types and pay scales have been classified as eligible candidates for participating in the selection. There is variation in the scales of Mail Loco Pilots, Passenger Loco Pilots and Good Loco Pilots. We have to ascertain as to whether these are three different categories, or these are to be termed as one category.

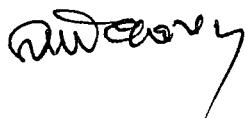
(13) The term "category" has been defined in the Concise Oxford Dictionary as "a class or a division." Considering this dictionary meaning of the term 'category', it can be said that it must be a class or a division. We have considered that three different classes or categories of the Loco Pilots have been considered eligible for participating in the selection. Then we have to agree with the argument of the learned counsel for the respondents that the Loco Pilots of three different categories were eligible to participate in the selection, and if it might have been a normal promotion, then all the candidates of the lower scale should have been termed as eligible for participating in the selection in the higher scale.



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(14) Learned counsel for respondents cited a judgment of the CAT, Jodhpur Bench in OA 71/03 and 72/03 – Bharat Lal & Others Vs. Union of India and others, decided on 14.9.2004. Learned counsel of the respondents argued that in that judgment of the CAT, Jodhpur Bench, controversy was the same, and based on the Hon'ble Supreme Court's judgment, a notification which was issued by the Railway Board had also been relied upon. Annexure.R/3 is the RBE 263/98 and in the judgment of the CAT, Jodhpur Bench, the controversy was regarding RBE 263/98 itself. It had been held "since we have come to the positive conclusion that the post of guard is a general selection post, the specific rule framed by the Railway Board for general selection posts vide Order No.RBE. 263/98 shall apply", and the relevant portion Para 2 of present Annexure.R/3 has also been cited in that judgment. In view of this Railway Board letter, marks on the basis of seniority shall not be awarded, and, moreover, those who secured more than 80% marks and were classified as outstanding will be placed at the top of the panel.

(15) From a perusal of Annexure A/2 notification, it can only be inferred that this notification was issued in order to fill up three posts of Loco Inspectors, and it was a general selection. It was not a normal promotion, and Loco Pilots of different categories were permitted to participate. We have stated above the dictionary meaning of word "category" and if the word "category" is to be considered in reference to the present case, we are of the opinion that the eligible staff of different categories were called upon to participate in the selection for the posts of



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Loco Inspectors and it can only be said that Railway Board Letter dated 16.11.1998 shall be applicable. This letter was issued in pursuance of the direction of the Hon'ble Supreme Court. Therefore, we disagree with the argument of the learned counsel for the applicant that the provisions of Para 215(e) and 219(j) of IREM shall be applicable in the present case. We are of the confirmed opinion that the Railway Board's letter dated 16.11.1998 shall be applicable. It is the specific stand of the respondents that Respondent No.4 Rajendra Badhana had secured more than 80% marks, and in view of the Railway Board letter, he was placed at the top of the panel, irrespective of the fact of the seniority. Seniority will have no role to play, and the contention of the applicant cannot be relied upon. It may be a fact that the applicant was earlier senior to Respondent No.4, but as the applicant had not secured more than 80% marks, and hence he was not classified as outstanding, and he was placed lower in the bottom of the panel, in pursuance of the Railway Board letter dated 16.11.1998.

(16) For the reasons mentioned above, we are of the opinion that the notification was issued by the respondents on 1.7.2009 in order to conduct general selection for three posts, and from amongst Loco Pilots, eligible employees of three categories were called to participate in the selection. Panel was prepared as per Railway Board letter dated 16.11.1998, and this notification was issued as per directions of the Hon'ble Supreme Court. We disagree with the contention of the applicant that in view of Para 215(e), the respondents ought to have called candidates only three times of the number of vacancies, and they

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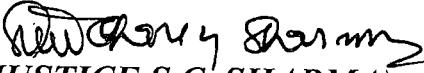
were not justified to call in excess of three times of the posts, and we also disagree with the contention that in case a candidate is classified as outstanding by securing 80% or more marks, then his seniority in the panel should have been determined as per Para 219(j) of the IREM as it stood prior to its amendment through the Railway Board letter dated 16.11.1998. The selection has been conducted by the respondents as per the latest rules. There appears no violation of the rules, as Rules 215(e), and the earlier 219(j) were not applicable to the facts of the case.

Applicant is not entitled to any relief. OA lacks merit and has to be dismissed. OA is dismissed. No order as to costs.

Dated this the 21st day of March, 2012



(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER



(JUSTICE S.C. SHARMA)
JUDICIAL MEMBER

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