

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 28¹⁵ day of May 2006.

Original Application No. 1155 of 1999.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A. K. Singh, Member (A)

Ajit Kumar Mishra,
Son of Om Prakash Mishra,
Mohalla Ganj Lakhna,
Etawah.

..... .Applicant

By Adv: Sri A. Srivastava

V E R S U S

1. Union of India through the Secretary,
P & T, Dak Bhawan,
NEW DELHI.
2. Superintendent of Post Offices,
Etawah Division,
Etawah.
3. Sub-Divisional Inspector,
(Posts), Bharthana,
District-Etawah.
4. Shri Shiv Pujan,
Son of Shrio Puttan Lal,
Resident of Neharpur, Lakhna,
District-Etawah.

..... .Respondents.

By Adv: Shri S. Singh.

O R D E R

BY K. B. S. Rajan, Member-J

The short, straight and simple issue involved
in this case is whether the authorities are right in
selecting that person who has secured more marks in

the High School examination, while the prescribed qualification is VIII pass and preference would be given to those who are high school passed.

2. In the case of **Raju Kumar Chaurasia vs Union of India and others (Order dated 17-01-2006 in OA No. 617/2005)** the judgment is to the effect that it is the minimum qualification and the first amongst those having that qualification that should be considered. It has been further reiterated in the Board's Order dated 17.9.2003 that the sole criteria for selection to the post of all categories of GDS will henceforth be the merit subject to orders on reservation and fulfilling other eligibility conditions like providing of space for BO, taking up residence in the BO village before appointment etc.

3. In that event, the other provision that preference would be given to those who have the high school qualification would be rendered otiose in case VIII qualification alone is considered, is the contention of the respondents.

5. First the rule position and then the facts where after, the legal position could be telescoped upon the factual position.

b/w

6. As per the extant Rules, the qualification requirement for the post of ED DA etc., is as under:-

"VIII Standard. Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

8. The interpretation required to be made is as to the above provisions.

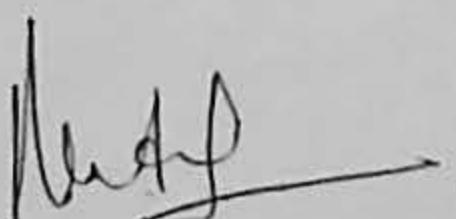
9. The Tribunal had earlier given its views that it is the VIII qualification that is to be taken into account. In that event, when shall the preferential qualification come into play? Here lies the main matter. If one has secured the highest mark in VIII (say A units) and another lower in the VIII standard (say B unit, B being less than A), but in the High School he has secured marks higher than that the other has secured in the VIII standard (Say A plus), then, it is the high School mark of the other candidate which has to be taken into account. That is the spirit of the rules. Instead, if the high School candidate has secured only less mark than any other in the VIII standard and his marks in the High School also happens to be less than the highest marks in the VIII Standard obtained by another individual, then the high School qualification has to sink into oblivion.

10. Now the following table gives the marks obtained by the applicant, the fourth respondent and a third party:

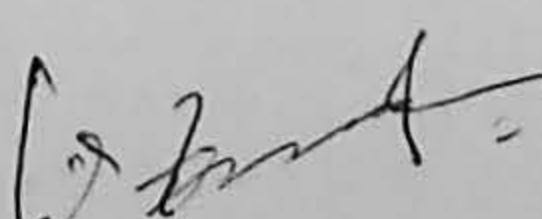
S.No	Party	VIII Std marks	High School
1.	Applicant	50.83%	Nil.
2	Respondent No. 4		54.66%
3.	Third Party	65.50%	Nil

11. Viewed from that angle, it may be seen that the selected candidate (Respondent No. 4 has not secured more marks than the highest marks in the VIII standard, secured by a third party. However, that party has not challenged the appointment of Respondent No., 4, while it is the applicant who has secured lower marks than the highest mark holder in the VIII standard who has approached the Court. As such, even if the appointment of Respondent No. 4 is held to be illegal, the same does not give rise to a right to the applicant to be appointed in the post now occupied by the fourth Respondent, as the applicant is not the most meritorious in VIII class. As such, the applicant has not made out a case in his favour.

12. Hence, the OA fails and is rejected but under the circumstances, there would be no order as to costs.



Member-A



Member-J

/ns/