

Central Administrative Tribunal
Jaipur Bench, JAIPUR

OA.26/2006

This the 20th day of January, 2010

Hon'ble Dr. K.S.Sugathan, Member (Administrative)
Hon'ble Dr. K.B.Suresh, Member (Judicial)

Mr. C.P. Anthony, aged about 48 year, S/o Late Shri H.L. Anthony, Resident of Anchee Ka Baa Bandiqui, District Dausa, presently working as Post Graduate Teacher in the pay scale of Rs. 6500-10500 at Railway Senior Secondary School, Bandikui, District Dause, Rajasthan.

...Applicant

(By Advocate: Shri Saugath Ray)

- VERSUS -

1. Union of India through Chairman, Railway Board, Ministry of Railways, Raisana Road, New Delhi.
2. The General Manager, Northwestern Railways, Hasanpura, Jaipur, Rajasthan.
3. Shri G.S. Jyotiana, Head Master, Railway Secondary School, Rewari,
4. Smt. Premkanwar, presently working as Principal (Junior Scale) at Railway Senior Secondary School, Bandiqui.
5. Mr. Ashok Kumar Chauhan, Principal Railway Senior Secondary School, Aburaod.

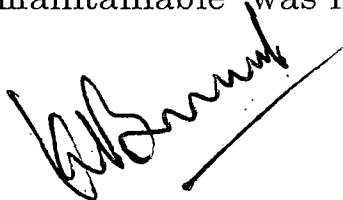
.....Respondents

(By Advocate: Shri Anupam Agarwal counsel for Res.No.1-2 &4 and Shri Ramesh Chand counsel for respondent No. 3)

ORDER

(By Hon'ble Dr.K.B.Suresh,M(J):

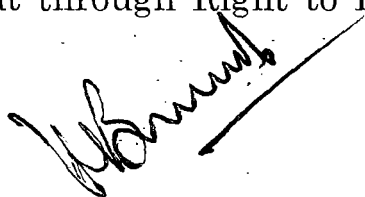
The applicant, when faced with the challenge of the plurality of the reliefs claimed which would make the application non-maintainable was inclined to limit his prayer to only one and that



he being the meritorious candidate as pointed out in the rejoinder; he ought to have been considered as against the name of Smt. Rathore whose name appear as the first in the appended list. All other causes are not pressed and had not been considered.

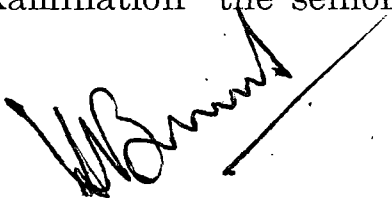
2. We had carefully gone through the pleadings. We find for some reasons or the other the post of Headmaster of school run by the Railway had been made a selection post. Possibly with a view for meritorious to shoulder the burden; thereupon the Railway had initiated a two pronged selection process whereby the written examination followed by the viva-voce as one limb and an assessment of service particular as the second limb was postulated but thereafter the process of written examination was given up and only viva-voce and assessment of service particular were given equal importance.

3. The selection process was completed with juncture of the applicant and the others as well. The railway authority pointed out that following the system of reservation one post out of the two have to be set apart as a reservation post. Both parties agree that on the post which is reserved, they can not pose a challenge since neither the applicant nor the contesting party belong to scheduled caste. The case of the applicant is that as he had found out through Right to Information inquiry that both Smt. Rathore

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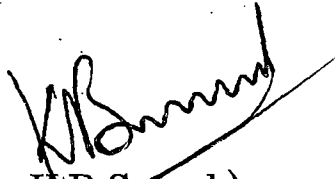
and Shri Anthony have secured thirtyfive marks each. He would stipulate that as Smt. Rathore had failed on earlier occasions but he himself is appearing for the first time and had come out successful. He would therefore allege that a diminished value ought to be ascribed to the mark obtained by Smt. Rathore. He did not elaborate on the percentage of diminishment which he calls forth on Smt. Rathore because of his earlier failure. But he would submit that even a one percent diminishment would take Smt. Rathore out of the equal in class situation thereupon the applicant would emerge as a winner and he would therefore submit that he ought to have been selected instead of Smt. Rathore.

4. The railway counsel countered this by saying that in effect the viva-voce examination by providing a minimum mark had actually initiated only a qualifying examination and not a competitive examination. He would say that among those qualify the senior most would prevail on rule adopted by the railway but he would point out that even if it is to be considered as a competitive examination the applicant can not claim extra benefit out of an earlier failure as they relates only to an earlier period and only the current value are taken as Bench mark. They submit that is so when two persons in equal competitive merit emerged out of the examination the senior most among them will be preferred. He

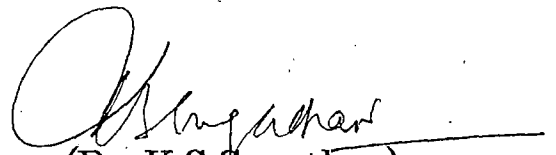
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would therefore submit that it was taken as a qualifying examination and the two senior most were given appointment on their attaining qualification. Thus two most qualified were selected.

5. We find merit in the contention of the respondents, even though the applicant was found out to be equally meritorious in the viva-voce as service particulars are also an issue for contention the railway authority can not be faulted for selecting Rathore instead of the applicant and in short the concept and the frame of examination as published would also indicate that it was a qualifying examination rather than a competitive examination. Therefore the application fails and it is dismissed but without costs



(Dr. K.B.Suresh)
Member (Judicial)



(Dr. K.S.Sugathan)
Member (Administrative)

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