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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH,
CALCUTTA**

O. A. No. 351/904 of 2020

IN THE MATTER OF:

ABDUL BASHEER O. son of Late
Hassan Hajee O. aged about 54 years,
residing at Quarter No. 20, VIP Road
near Air Cargo Complex, Post Office-
Junglighat, Port Blair, District- South
Andaman, Pin-744103 and recently
working to the post of Peon-cum-
Chowkidar under the Directorate of
Education, Andaman & Nicobar
Administration, Port Blair.

...Applicant

-VERSUS-

1. **UNION OF INDIA** service through
the Secretary, Government of
India, Ministry of Human Resource
Development, Shastri Bhawan,
New Delhi- 110001.

2. **THE LIEUTENANT GOVERNOR,**

Andaman & Nicobar Islands, Raj
Niwas, Port Blair-744101;

3. **THE ANDAMAN & NICOBAR
ADMINISTRATION** service

through the Chief Secretary,
Andaman & Nicobar
Administration, Secretariat
Complex, Port Blair-744101;

4. **THE SECRETARY (EDUCATION),**

Andaman & Nicobar
Administration, Secretariat, Port
Blair-744101;

5. **THE DIRECTOR OF EDUCATION,**

Andaman & Nicobar
Administration VIP Road, Port
Blair-744103;

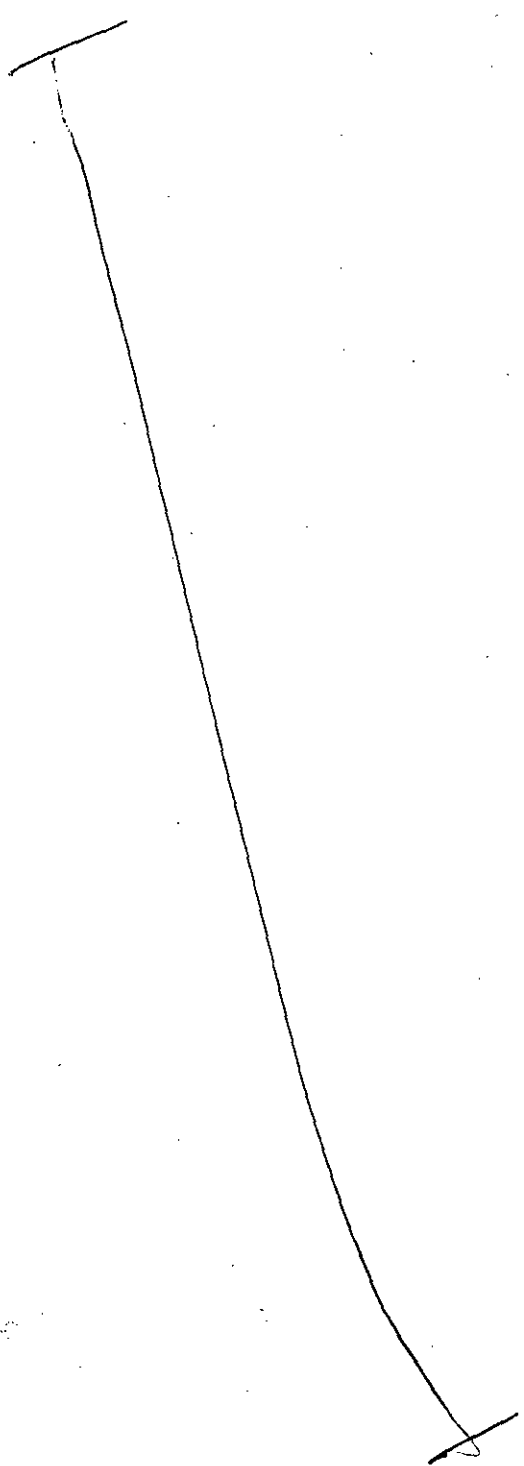
6. **THE ASSISTANT DIRECTOR OF
EDUCATION (Personnel),**

Andaman & Nicobar
Administration VIP Road, Port
Blair-744103.

7. Shri Om Prakash, Peon-cum-Chowkidar, service through the Director of Education, Andaman & Nicobar Administration VIP Road, Port Blair-744103.
8. Shri K. Satyanarayana, Peon-cum-Chowkidar, service through the Director of Education, Andaman & Nicobar Administration VIP Road, Port Blair-744103.
9. Shri P. Basheer, at present holding the post of Laboratory Assistant, service through the Director of Education, Andaman & Nicobar Administration VIP Road, Port Blair-744103.
10. Shri Tejeswara Rao, at present holding the post of Laboratory Assistant, service through the Director of Education, Andaman & Nicobar Administration VIP Road, Port Blair-744103.

11. Shri K. Ramar, at present holding
the post of Laboratory Assistant,
service through the Director of
Education, Andaman & Nicobar
Administration VIP Road, Port
Blair-744103.

...Respondents.



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

O.A.No. 351/901/2020

Date of order: 19.01.2021

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

Abdul Basheer OApplicant

Versus

Union of India & Ors.....Respondents

For the Applicant : Mr. P.C.Das, Counsel

For the Respondents : Mr. K.Rao, Counsel

ORDER

Tarun Shridhar, Administrative Member:

The applicant, Abdul Basheer O, working in the post of Peon-cum-Chowkidar under the Directorate of Education, is aggrieved that inspite of having been qualified and duly recommended for promotion to the post of Laboratory Assistant/Attendant, this promotion has been denied to him. By virtue of this O.A., he seeks the following relief:

- "a) To quash and /or cancel and /or modify the impugned order No. 906 dated 22nd June, 2020 issued by the Director of Education, Andaman & Nicobar Administration being Annexure A-24 of this original application wherein the name of the applicant is not*

there in the promotional list whose name was appeared in the merit list published by the Andaman and Nicobar Administration being Annexure A-9(A) of this original application at Serial No. 5 for promotion to post of Laboratory Assistant whose name was duly recommended by the DPC in their meeting of 2007 being Annexure A-11 of this original application and in the said recommendation list, the name of the applicant appeared at serial No. 5 whereas the names of the private respondents appeared at serial No. 12 and 13 in the recommendation of DPC in terms of the merit list. All are the juniors than the present applicant in terms of the merit list made by the Director of Education and as per the recommendation made by the DPC on that ground the impugned order dated 22nd June, has to be modified by giving promotion to the post applicant with effect from the date when the private respondents have got the same and to fix his seniority in terms of the recommendation made by the DPC being Annexure A-9(A) of this original application.

- b) To cancel and/or modify the impugned order No. 1226 dated 24th August, 2020 being Annexure A-25 of this original application by which the promotion of the private respondents were given effect to without considering the case of the present for granting promotion in his favour to the post of Laboratory Assistant who was duly recommended by the DPC and who is fully eligible in respect of such promotion as per the merit list made by the respondent authority being Annexure A-9(A) of this original application and he is entitled to get the promotion in the light of the decision of the Hon'ble supreme Court in Civil Appeal Nos. 2155-2156/2010 in the case of Tejeswara Rao & Ors., vs- Union of India & Ors and said promotion has to be given effect with effect from 2011 along with all consequential benefits."

As an interim relief, he has prayed as under:

"To stay of operation of the impugned order No. 906 dated 22nd June, 2020 issued by the Director of Education, Andaman & Nicobar Administration being Annexure A-24 of this original application and the impugned order No. 1226 dated 24th August, 2020 being Annexure A-25 of this original application on the ground that the junior candidates whose name appeared in the merit list far below than the present applicant got the promotion and as per the DPC

recommended their names appeared much below the present applicant, therefore, such promotion orders favouring the private respondents and excluding the name of the present applicant is wholly illegal and arbitrary against the merit list published by the Director of Education being Annexure A-9(A) of this original application and on that ground both the impugned orders mentioned above stayed till the disposal of this original application."

2. Annexure-A/24, referred to, is an order passed by the Directorate of Education quoting the order of Hon'ble Supreme Court that the Group-D staffs have been promoted to the post of Laboratory Assistant in compliance to that order. Annexure-A/25, referred to in the same context, is an order of posting of these five personnel.

3. The case of the applicant is that he was found eligible for the selection process, which included written examination for the post of Laboratory Assistant, and, subsequent to this examination, his name was placed at Sl. No. 5 in the merit list. The Departmental Promotion Committee, which held its meeting on 23.03.2007, accordingly, recommended his name for promotion to Group-"C" Non-Ministerial post of Laboratory Assistant at Sl. No. 5 in order of merit. However, he has not been given appointment whereas five other people have been given appointment, which includes the name of those, who were lower in the merit than him.

4. The respondents, in their reply, have categorically stated that subsequent to the selection, the applicant was found to be ineligible as

he did not have Chemistry as a subject in the 12th standard. The process of filling up of post of Laboratory Assistant was taken up in compliance with the order of the Hon'ble Apex Court and since the applicant did not possess the requisite qualification, he was not considered at the time of final appointment.

5. During the course of arguments, the Ld. Counsel for the applicant draws our attention to the notified Recruitment Rules applicable at the time of this selection for the post of Laboratory Assistant and rests his case on column 8 of these rules, which prescribed educational and other qualification prescribed for Direct Recruits.

The essential qualification mentioned in this column is "Sr. Secondary School Certificate (12th standard) Examination with Science stream or its equivalent". The relevant rule for recruitment by promotion/deputation/absorption etc. is in Rule 12, which again mentions that for promotion from Group-D employees also the essential qualification would be 12th standard with Science.

6. Ld. Counsel for the applicant states that the applicant had taken up Science stream in his 12th standard. His Marks Sheet clearly indicates he had studied Physics, Biology and Home Science and later on even improved his academic qualification by passing the examination in Chemistry too. According to him, there is no ambiguity in the

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Recruitment Rules and nowhere do they either mention or even hint that the Science stream means Chemistry as essential component of it.

7. Ld. Counsel for the respondents, on the other hand, strongly opposes this plea on the ground that everything need not be spelt out. The term Science essentially includes Physics, Chemistry and Biology. Moreover, without the qualification of Chemistry, as a subject, it would practically not be feasible to select a person, who is not able to perform the duties in a Chemistry Laboratory. According to him, the selection by promotion has been fair and strictly in accordance with the provisions of the Recruitment Rules.

8. We are unable to accept the contention of Ld. Counsel for the respondents on the following grounds:

- (a) The applicant's name figures in the list of eligible candidates for the post of Library Assistant.
- (b) The applicant cleared the written examination held for the purpose of this promotion and was placed at Sl. No.5 in the merit list, which contained all thirteen names.
- (c) The DPC found him fit to hold this position and, accordingly, placed his name in the merit list.
- (d) At these relevant stages, the applicant possessed Class

12 certificate with Science stream subjects, even through the subject Chemistry did not figure in it.

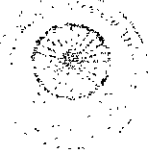
The above four facts are not disputed by the respondents.

9. Now, whether without Chemistry, the applicant's Class 12 certificate becomes invalid for the purpose of selection is an interpretation done by the respondents, which has led to denial to the applicant of this promotional post. The Recruitment Rules, as prevalent at that time, are unambiguous in the language, which mentions only Science stream. The induction of having Chemistry as essential component of the Science stream is not either written down in black and white or alluded to. There are laboratory of Botany, Physics, Zoology and even Home Science so why single out Chemistry as being essential has not been explained. Moreover, here is a case of Group-D employee further improving his qualifications by passing +2 examination in Chemistry too. In the circumstances, he marches more than just a recognition.

10. Having heard the Ld. Counsels for the parties at length and perusing the entire O.A., its reply and all supporting documents, we find it to be a fit case to quash the impugned order and direct the respondents to pass orders giving appointment to the applicant as Laboratory Assistant in accordance with his position in the merit list

prepared pursuant to the recommendations of the Departmental Promotion Committee. Ordered accordingly.

10. The O.A. is disposed of accordingly. No costs.



(Tarun Shridhar)

Administrative Member

(Bidisha Barerjee)

Judicial Member

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