

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2446 OF 2014

New Delhi, this the 30th day of August, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Sh.Naveen Kumar Sharma,
aged 43 years,
S/o Sh.Dipchand Sharma,
H.No.3208, Watchman (Group D),
Sector 9A, Housing Board,
Bahadurgarh,
Haryana

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Applicant

(By Advocate: Shri O.P.Gehlot)

Vs.

1. Govt. of NCT of Delhi through
Secretary,
Department of Education,
Delhi Government Secretariat,
I.P.Estate, New Delhi.

2. Director of Education,
Govt.of NCT of Delhi,
Old Secretariat,
Delhi-54

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Respondents

(By Advocate: Shri K.M.Singh)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

In this O.A. the applicant has prayed for the following reliefs:

- ō (a) To order inclusion of the Applicant's name at the appropriate place in the eligibility list dated 6.6.14 (A/1) by considering him eligible for the post of Laboratory Assistant as per the existing cutoff date of eligibility and consider him for promotion;
- (b) To declare the cutoff date of eligibility as irrational and arbitrary and thus invalid.
- (c) to order extension of the cutoff date to 1.1.2014 so as to make it rational and relevant for promotions during the current year which are yet to be done.
- (d) to declare all those eligible who have passed in science subjects at the level of senior secondary or at any higher level without necessarily passing at the matriculation level,
- (e) to issue any other order/direction that may advance the cause of justice and do justice to the applicant.ö

2. Resisting the O.A., the respondents have filed a counter reply.

The applicant has also filed a rejoinder reply thereto.

3. We have carefully perused the records, and have heard Shri O.P.Gehlot, the learned counsel appearing for the applicant, and Shri K.M.Singh, the learned counsel appearing for the respondents.

4. Brief facts of the case, which are not in dispute, are as follows:

4.1 The applicant was appointed as a Watchman (Group D) in A & U Tibhia College under respondent no.1 on 20.9.1993.

4.2 Respondent no.2 issued a general circular letter No.F.DE-4(8)/23/E-IV/Lab.Asstt./2013/ 482/ 50 dated 30.7.2013 (Annexure A/2) to

all the Heads of Departments, Government of NCT of Delhi, and invited names of all eligible Group -DØ employees working under the Government of NCT of Delhi for preparation of a tentative eligibility list for their promotion to the post of Laboratory Assistant under respondent no.2. As per this letter, the last date for receipt of particulars of eligible employees by them from various Departments was 30.8.2013, and the cut-off date for consideration of eligibility was 1.1.2012.

4.2.1 The circular letter dated 30.7.2013(ibid) stipulated the following eligibility/educational qualifications:

“ The concerned official(s) should have completed 03 years service as regular employee and should possess **Matriculation or equivalent/Higher Secondary with Science(Physics and Chemistry with Practical or physics, chemistry & biology with Practical) and employees who are matriculate or equivalent/Higher secondary without science: provided they have successfully undergone a three months Orientation Course in Science conducted by the Directorate of Education....”**

4.2.2 It was also stipulated in the circular letter dated 30.7.2013(ibid) that the Heads of Departments should furnish the particulars in prescribed format along with separate folder for each employee containing attested copies of educational qualification certificates (Mark Sheet & Certificate), Caste Certificate, Work & Conduct Report, Vigilance Clearance Report, Integrity Certificate and first page of service book (concerned page of service book containing absorption/redeployment entry in the case of the employee absorbed/redeployed in GNCT of Delhi and also the concerned page of service book showing the Date of appointment of the official).

4.3 In response to the circular letter dated 30.7.2013 (ibid), the concerned authority, under whom the applicant has been working, furnished to respondent no.2 the requisite particulars along with the attested copies of educational certificates and mark-sheets of Matriculation Examination passed by the applicant in March 1986 (conducted by the Board of School Education, Haryana), the Senior Secondary Examination passed by the applicant in October 2010 (conducted by the National Institute of Open Schooling, Government of India, Noida), Secondary Examination in the Additional Subject of Science passed by the applicant in March 2013 (conducted by the Board of School Education, Haryana), and other relevant documents, in respect of the applicant by the stipulated date.

4.3.1 The applicant had taken Science as an additional subject in the Matriculation Examination, and had not been declared to have passed therein.

4.3.2 In the Senior Secondary Examination held in October 2010 (the certificate of which was issued on 18.4.2011 by the National Institute of Open Schooling, Government of India, Noida), the applicant passed Chemistry, Biology, Physics with practical, along with the subjects of Hindi and English.

4.3.3 The applicant passed the Additional Subject of Science in the Secondary Examination held in March 2013 (the certificate of which was issued by the Board of School Education, Haryana, on 6.6.2013).

4.4 Respondent no.2 issued a Tentative Eligibility List of Group-D employees for promotion to the post of Laboratory Assistant, vide letter dated 28.2.2014(Annexure A/3), wherein, vide sl.no.143, the applicant's name appeared with the remarks in one of the column:

ö Board of School Education Haryana (Xth)
National Open School, Noida (XII)ö

and in the another column:

ö Date of acquiring requisite qualification after 01.01.2012.ö

4.5 Thereafter, respondent no.2 issued Final Seniority/eligibility list of Group ÷ D employees for promotion to the post of Laboratory Assistant, vide letter dated 6.6.2014 (Annexure A/1), wherein the applicant's name did not appear.

5. In the context of the above, it was submitted by Shri O.P.Gehlot, the learned counsel appearing for the applicant that when the applicant had passed Senior Secondary Examination held in October 2010, with Physics, Chemistry & Biology with Practical, the respondents acted arbitrarily and unreasonably in declaring the applicant as ineligible solely because of his having passed the Additional Subject of Science in the Secondary Examination held in March 2013(the certificate of which was granted to the applicant on 6.6.2013), i.e., after the purported cut-off date (1.1.2012). In terms of the Recruitment Rules and the circular letter dated 30.7.2013(ibid), the applicant was fully eligible to be considered for promotion to the post of Laboratory Assistant. To buttress his submission, Shri O.P.Gehlot relied on the decisions in **Rajpal Vs. State of Haryana and**

another, (2002) 10 SCC 588; **State of Haryana and another Vs. Abdul Gaffar Khan and another**, (2006) 11 SCC 153; **Mrs. Manju Pal Vs. Govt. of National Capital Territory of Delhi and Anr.**, 2002(1) AISLJ 377(Delhi), and **Domendra Kumar Sahu Vs. State of Chhattisgarh and others**, 2013(1) SCT 582.

5.1.1 In **Rajpal Vs. State of Haryana and another** (supra), it was held by the Honøble Supreme Court that when a candidate possessed the higher qualification of 10+2 examination from an appropriate Board, the point that he had passed matriculation examination conducted by a Vishwavidyalaya which was not a University established or deemed to be so by law was inconsequential.

5.1.2 In **State of Haryana and another Vs. Abdul Gaffar Khan and another** (supra), the respondents were candidates for the post of Unani Dispenser. The Advertisement stipulated the educational qualification (i) Unani Dispenser from any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India or Up-Vaidya of any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India having knowledge of Urdu, (ii) Matric or its equivalent, (iii) Knowledge of Hindi and English up to Matric standard. The respondents possessed the qualification of Bachelor of Unani Medicine and Surgery from Kanpur University apart from matric with Hindi and 10+2 with Science. The Haryana Staff Selection Commission recommended the respondents for appointment. The appellant-

State Government denied appointment to the respondents for the reason that they were not possessing Diploma in Unani Dispenser or Up-Vaidya from a recognized University/Institution or Board which was the prescribed qualification for the post of Unani Dispenser under the Haryana Ayurvedic/Homoeopathic and Unani Technical Group (C) Service Rules, 1997. The Honøble High Court quashed the action of the State to deny the appointment to the respondents. In the appeals, the Honøble Supreme Court observed, inter alia, that the said Rules do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. The Advertisement also does not anywhere stipulate the diploma as the required qualification. Accordingly, the Honøble Supreme Court upheld the decision of the Honøble High Court and dismissed the appeals.

5.2 In **Mrs. Manju Pal Vs. Govt.of National Capital Territory of Delhi and Anr.** (supra), the Honøble High Court of Delhi held that a person with higher qualification cannot be treated as lesser qualified than one having lower qualifications.

5.3 In **Domendra Kumar Sahu Vs. State of Chhattisgarh and others** (supra), the petitioner, who was a diploma holder in Pharmacy and candidate for selection to the post of Pharmacist Grade II, challenged the select list mainly on the ground that the authorities gave preference to the degree holders over diploma holders when the qualification prescribed in the advertisement was Higher Secondary pass certificate or 10/12th pass in

Science subject in 10+2 system with diploma in Pharmacy. The Honøble Chhattisgarh High Court held thus:

õ6. í í í í ..Diploma in Pharmacy is the minimum qualification, as has been prescribed in the Advertisement itself, and if a person is having superior qualification, i.e., Bachelor of Pharmacy, his/her candidature cannot be rejected on the ground that he/she did not have Diploma in Pharmacy. Having Bachelor of Pharmacy qualification means that the candidate has better knowledge in the Pharmacy, which is required for appointment on the post of Pharmacist Grade II. A better qualified can never be rejected on the ground that the candidates having lesser qualification, i.e. Diploma in Pharmacy are available. This is also not the intention of the Government.ö

Accordingly, the writ petition was dismissed by the Honøble High Court.

6. On the other hand, it was submitted by Shri K.M.Singh, the learned counsel appearing for the respondents that as the applicant passed the additional subject of Science in the Secondary Examination held in March 2013, the certificate for which was issued on 6.6.2013, i.e., after the cut-off date (1.1.2012), the applicant was not eligible for promotion to the post of Laboratory Assistant. Therefore, there is no infirmity in the decision taken by the respondents in declaring the applicant as ineligible and in not including the applicant in the list dated 6.6.2014 issued vide letter dated 6.6.2014 (Annexure A/1).

7. After having considered the rival contentions in the context of the admitted factual position and also in the light of the decisions discussed in the preceding paragraphs, we have found no substance in the contention of Shri N.K.Singh, the learned counsel appearing for the respondents.

8. The Recruitment Rules and the circular dated 30.7.2013(ibid) prescribed the educational qualification for the post of Laboratory Assistant as follows:

Matriculation or equivalent / Higher Secondary with Science (Physics and Chemistry with Practical or physics, chemistry & biology with Practical) and employees who are matriculate or equivalent/Higher secondary without science: provided they have successfully undergone a three months Orientation Course in Science conducted by the Directorate of Educationí .ö

From the above, it is evident that a Group -Dø employee possessing either Matriculation or equivalent with Science (Physics and Chemistry with Practical or physics, chemistry & biology with Practical, or Higher Secondary with Science (Physics and Chemistry with Practical or physics, chemistry & biology with Practical, by the cut-off date 1.1.2012, was eligible for promotion to the post of Laboratory Assistant. It is also evident that a Group -Dø employee, who passed Science (Physics and Chemistry with Practical or physics, chemistry & biology with Practical) either at the Matriculation or equivalent level, or at the Higher Secondary level by the cut-off date (1.1.2012) was eligible for promotion to the post of Laboratory Assistant. Admittedly, the applicant passed Senior Secondary Examination with Chemistry, Biology and Physics with Practical held in October 2010, in respect of which the certificate dated 18.4.2011 was granted to him by the National Institute of Open Schooling, Government of India, Noida. Therefore, the applicant was fully eligible for promotion to the post of Laboratory Assistant. The said Senior Secondary Examination certificate,

along with the Matriculation Examination and Secondary Examination (Additional Subject of Science), was also furnished by the concerned authority to respondent no.2. By referring to the applicant's certificate of Secondary Examination (Additional Subject of Science) which was granted to him in June 2013, respondent no.2 declared the applicant as ineligible saying "Date of acquiring requisite qualification after 01.01.2012", although acquisition of the qualification of pass in Science subject at the Secondary level was inconsequential in the case of the applicant because of his having already passed Senior Secondary Examination with Physics and Chemistry with Practical or physics, chemistry & biology with Practical in October 2010 for which the certificate was granted to him on 18.4.2011, i.e., prior to the cut-off date (1.1.2012). While determining the eligibility of the applicant, the respondents have failed to take into account the applicant's said certificate of Senior Secondary Examination. In the above view of the matter, the decision of the respondents in declaring the applicant as ineligible and in not including the applicant in the list of eligible Group D employees for promotion to the post of Laboratory Assistant in the Directorate of Education, GNCT of Delhi, is unsustainable and liable to be interfered with.

9. In the light of our above discussions, we direct the respondents to include the names of the applicant and other similarly placed persons at the appropriate place(s) in the final seniority/eligibility list of Group -D employees for promotion to the post of Laboratory Assistant in the

Directorate of Education, which was issued vide letter dated 6.6.2014 (Annexure A/1) and to consider their cases along with others for promotion to the post of Laboratory Assistant. The respondents shall comply with the direction contained in this order within a period of ninety days from today.

10. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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