

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

No. O.A.No. 351/82/2016
MA 431/AN/2018

Date of Order: 25.03.2019

Ashok Kr. & Ors..... Applicant(s)

Ms. A.Nag Advocate for applicant (s)

VERSUS

Fisheries Respondent(s)

None Advocate for respondent(s)

CORAM

Hon'ble Ms. Manjula Das, Judicial Member

Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Whether reporters of local papers may be allowed to see the judgment? *no*
2. To be referred to the reporter or not? *yes*
3. Whether it needs to be circulated to other Benches of Tribunal? *no*

Manjula Das
Judicial Member

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

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Date of Order: 25.03.2019


Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. SHRI ASHOK KUMAR
AGED ABOUT 52 YEARS,
S/O LATE K.NARAYAN,
R/O PHOENIX BAY,
PORT BLAIR, WORKING AS FISHERMAN,
DIRECTORATE OF FISHERIES,
ANDAMAN & NICOBAR ADMINISTRATION
PORT BLAIR. PIN-744102.

2. SHRI N. RAMAIAH
AGED ABOUT 45 YEARS,
S/O LATE N. RAMACHANDRAN,
R/O ANARKALI, PORT BLAIR,
WORKING AS FISHERMAN,
DIRECTORATE OF FISHERIES,
ANDAMAN & NICOBAR ADMINISTRATION
PORT BLAIR. PIN-744101.

3. SHRI D.CHALAMAIAH
AGED ABOUT 46 YEARS,
S/O LATE D.DOMBURU
R/O NAYAGAON, PORT BLAIR
WORKING AS FISHERMAN,
DIRECTORATE OF FISHERIES,
ANDAMAN & NICOBAR ADMINISTRATION
PORT BLAIR. PIN-744102.

4. SHRI M.DHARMA RAO
AGED ABOUT 40 YEARS,
S/O LATE M. KAMARAJU,
R/O PANIGHAT, CHUNNABATTA,
BAMBOOFLAT, SOUTH ANDAMAN
WORKING AS FISHERMAN,



DIRECTORATE OF FISHERIES,
ANDAMAN & NICOBAR ADMINISTRATION
PORT BLAIR. PIN-744103.

.....APPLICANTS

VS

1. THE UNION OF INDIA
THROUGH THE SECRETARY TO
THE GOVERNMENT OF INDIA,
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
SHASTRI BHAWAN, NEW DELHI-110001.

2. THE LIEUTENANT GOVERNOR,
ANDAMAN AND NICOBAR ISLANDS,
PORT BLAIR, PIN-744101.

3. THE CHIEF SECRETARY,
ANDAMAN & NICOBAR ADMINISTRATION,
SECRETARIAT BUILDING,
PORT BLAIR, PIN-744101.

4. THE PRINCIPAL SECRETARY,
ANDAMAN AND NICOBAR ADMINISTRATION,
SECRETARIAT BUILDING,
PORT BLAIR, PIN-744101.

5. THE DIRECTOR,
DIRECTORATE OF FISHERIES,
ANDAMAN AND NICOBAR ADMINISTRATION,
PORT BLAIR, PIN-744102.

6. THE DEPUTY DIRECTOR,
DIRECTORATE OF FISHERIES,
ANDAMAN AND NICOBAR ADMINISTRATION
PORT BLAIR, PIN-744102.

.....RESPONDENTS

For the Applicants: Ms. A.Nag
For the Respondents: None

ORDER (Oral)

Per: Ms. Manjula Das, Member (I):

Being aggrieved with clause (9) of the Recruitment Rule dated
31.08.2010, the applicant approached this Tribunal under Section 19 of




the Administrative Tribunals Act, 1985 with the following reliefs:

- a. Leave be granted to move the application jointly under rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.
- b. An order/orders quashing clause 9 of the recruitment rule dated 31.08.2010 for the post of Assistant Fisheries Guard so far it relates to the educational qualification of promotees is concerned.
- c. An order/orders/direction/directing the respondent authorities to fill up the post of Assistant Fisheries Guard after prayer b of this application is adjudicated.
- d. An order/orders/direction/directing the respondent authorities to appoint the candidates in accordance with the corrected recruitment rule.
- e. An order directing the respondent authorities to act in accordance with law.
- f. An order to issue, directing the respondents to produce the records of the case before this Hon'ble Tribunal so that conscious able justice may be done.
- g. Such other or further order direction or directions, as your LORDSHIPS deem fit and proper in the interest of justice."

2. Heard Ms. A.Nag, Ld. Counsel for the applicant.
3. None is present for the Respondents in the Court. No reply has also been filed.
4. The basic grievance made by the applicants in their pleadings is that they are working in the Department of Fisheries as Fisherman for the last 21 years and were also eligible for promotion to the post of Assistant Fisheries Guard much before 2001. However, they were not appointed. In the meantime, the authorities framed Recruitment Rule on 31.08.2010 to fill up the post of Assistant Fisheries Guard where different qualifications were prescribed for appointment to the said post. To appoint a candidate to the post of Assistant Fisheries Guard on direct recruitment, the Secondary School Examination (10th Standard)

pass from a recognized board/university and Fisheries training from Department of Training Centre, Port Blair/Car Nicobar were required. As the applicants are not having the same qualification, they are debarred from getting the benefit of promotion and, as such, according to the applicants, the new Recruitment Rule dated 31.08.2010 is bad in law and should be declared not sustainable so far as applicants' cases are concerned.

5. The contention of Ms. Nag, Ld. Counsel, who appeared on behalf of the applicants, is that the applicants were appointed on different dates as Fisherman on being participated in the selection process conducted by the Respondent authorities. At the time, when the applicants were appointed to the post of Fisherman, the Recruitment Rule for the promotional post of Assistant Fisheries Guard postulates educational qualification of 8th pass with five years regular service and Fisheries Training from Departmental Training Centre, Port Blair/Car Nicobar. Ld. Counsel further argued that the applicants are working in the department as Fisherman for the last more than 20 years and they were craving for promotion as there was sufficient opportunity in the Recruitment Rule and in fact many of their seniors have been promoted to the post of Assistant Fisheries Guard and one of them reached upto the post of Sub-Inspector (Fisheries) and on 31.08.2010 the authorities has issued new Recruitment Rule. Due to the framing of the new Recruitment Rule dated 31.08.2010, which prescribed the educational qualification as 10th pass and Fisheries Training from Departmental Training Centre, the applicants have become ineligible. The avenue of



promotion of the applicants is stopped by virtue of insertion of clause (9) in the Recruitment Rule of 31.08.2010. The new addition of clause (9) in the Recruitment Rule is discriminatory resulting closing of the gate for promotion of the applicants that too after a long year of service of about 20 years and, as such, the action of the Respondent authorities by inserting that clause cannot be sustained under the law and would be set aside and quashed.

6. Having heard Ld. Counsel for the applicant and after perusing the pleadings before us, we noted that in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, read with Govt. of India, Ministry of Home Affairs, Notification No. 14/3/60-ANL dated 11.04.1960 and in supersession of all previous notifications in this regard, the Lieutenant Governor (Administration), Andaman and Nicobar Island, framed the rules regulating the method of recruitment to the various categories of Group 'C' posts borne in the establishment of Fisheries Department of Andaman and Nicobar Administration vide notification dated 31.08.2010. Prior to that, in 1992, there was a notification of the Andman & Nicobar Administration, Secretariat dated 21.04.1992, which was framed in exercise of the power conferred by proviso to Article 309 of the Constitution of India where it has been prescribed as under:

"9.Educational Qualification: 8th Std. pass.

xxx

xxx

xxx

12.Promotion from the post of Fisherman with 5 years experience in the grade."



In the subsequent notification dated 31.08.2010 in clause (8) and (9) it has been prescribed as under:

8.	Educational and other qualifications required for direct recruits	<u>Essential:-</u> 1) Secondary School Examination (10 th std.) pass from a recognized Board/ University 2) Fisheries Training from Departmental Training Centre, Port Blair/Car Nicobar
9.	Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotees?	Educational qualification-Yes Age-No

The incorporation of the education qualification of 10th standard pass created hindrance for the applicants in getting promotion from the grade of Fisherman. Hence, this O.A. has been filed by challenging clause (8) and (9) of the Recruitment Rule dated 31.08.2010.

7. We further noted that the present provisions of law, i.e. Recruitment Rule of 31.08.2010, which was framed by exercising the power conferred by the proviso to Article 309 of the Constitution of India is enforceable under law, more so, the same is a Government policy to accord sanction of the Rule for method of recruitment in case of various categories of Group 'C' posts borne in the establishment of Fisheries Department of Andman and Nicobar Administration. Further, no cogent reason has been assigned or vires of the rule of 31.08.2010 has been challenged by the applicant. The basic principle of law time to time framed by the Government is for streamlining the fair process of recruitment, which in our view should not be interfered.



8. Taking into the entire conspectus of the case, we hold that the Rule dated 31.08.2010 framed for regulating the method of recruitment, as stated in the forgoing paragraphs, is not found to be illegal and, according to our view, the prayer made by the applicants for quashing clause (9) of the Recruitment Rule dated 31.08.2010 for the post of Assistant Fisheries Guard so far the educational qualification for promotion is concerned fails.

As the case is devoid of merit, the O.A. stands dismissed accordingly. Consequently, M.A.No. 431/AN/2018 is also disposed of.

No order as to costs.

(Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

RK