



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

**No. O.A. 238/A&N/2015**

**Date of order: 23.9.19**

**Present: THE HON'BLE SMT. BIDISHA BANERJEE, MEMBER (J)  
THE HON'BLE MR. NEKKHOMANG NEHSIAL, MEMBER (A)**

1. Shri K. Anil Kumar  
S/o V. Krishnan  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Model Senior  
Secondary School, Mayabunder, Middle Andaman.
2. Shri Kasim Ali  
S/o Late Subhan Ali  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Education Office  
Car Nicobar.
3. Smti. S. Sarojini Amma  
D/o Late G. Raghavan Nair  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Middle School  
P/Puram Village, Betapur No. 3 P.O.  
Middle Andaman.
4. Shri Nirmal Chandra Mazumder  
S/o Shri Nimchand Mazumder  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Model Senior  
Secondary School, Mayabunder, Middle Andaman.
5. Shri K. Rama Rao  
S/o Late Boddu  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Model Senior  
Secondary School, Mayabunder, Middle Andaman.

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6. Shri Sujan Paul  
S/o Late Sarat Chandra Paul  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Senior Secondary  
School, Diglipur, North Andaman.
7. Smti. Renuka Baroi  
W/o Late Sunil Chandra Baroi  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Secondary School  
Keralapuram, North Andaman.
8. Shri K. Aziz  
S/o Late Ch. Mohammed  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. senior Secondary School  
Diglipur, North Andaman.
9. Smti Anita Rani Sarkar  
W/o Subrata Sarkar  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Primary School  
V.V.Pith, R.K. Gram, Diglipur, North Andaman.
10. Surja Kanta Paul  
D/o Biswanath Paul  
Performing and discharging the duties  
As in the capacity of Peon-cum-Chowkidar  
Presently posted at Govt. Secondary School  
Madhupur, Diglipur, North Andaman.

**.. Applicants**

**-Versus-**

1. The Union of India  
Service through the Secretary  
Ministry of Home Affairs, New Delhi – 110001.
2. The Lieutenant Governor  
A & N Islands, Raj Niwas, Port Blair – 744101.

*M. M. G. G. G.*

3. The Chief Secretary, Secretariat  
A & N Administration, Port Blair – 744101.
4. The Secretary (Education), Secretariat  
A & N Administration, Port Blair – 744101.
5. The Director (Education)  
Directorate of Education  
A&N Administration, Port Blair – 744101.
6. The Director (Education)  
Directorate of Education  
A&N Administration, Port Blair – 744101.

.. Respondents

For the Applicants :

Sri R. George

For the Respondents :

Md. Tabraiz

### **ORDER**

#### **NEKKHOMANG NEHSIAL MEMBER (A):**

This O.A. has been preferred by 10 applicants under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

- "8.(a) Leave be granted to move one single application jointly under rule 4(5)(a) of the Central Administrative Tribunal Procedure Rules, 1987 since the cause of action and prayer for are identical in nature.
- (b) A mandatory order directing the respondent authorities to delete the provision of written test for promotion to the post of Laboratory Assistant and further directing them to amend the recruitment rule suitably by protecting the service career of the applicants.
- (c) An order directing the respondents to certify and transmit the records relating to the instant proceedings so that conscionable justice could be rendered.

*M. M. G. M. M.*

- (d) To pass such order or further orders, direction/directions as your Lordships may deem fit and proper."

2. Since the present applicants are seeking similar relief from the same respondents, the prayer for joining together under Rule 4(5)(a) of Central Administrative Tribunals (Procedure) Rules, 1987 is allowed.

3. Facts of the case of the applicants are that:-

- (i) That the applicants, who appointed during the year 1998, are performing and discharging the duties in the capacity of Peon-Cum-Chowkidar under the Department of Education.
- (ii) That at the time of initial appointment, they were governed by recruitment rule notified on 17.01.1978 and in the said recruitment rule, the criteria prescribed for the promotion to the post of Laboratory Assistant.
- (iii) That in the said recruitment rule, no other criteria prescribed for promotion to the post of Laboratory Assistant whereas by a notified recruitment rule dated 14.03.2006, the respondent concerned introduced the criteria of written examination and 05 years regular service in the respective grade and the applicants reproduces the criteria for promotion to the post of Laboratory Assistant.
- (iv) That at the time of their appointment, for promotion to the post of Laboratory Assistant, there was no criteria fixed as written test wherein by the introduction of the recruitment rule of 2006, the respondent authorities added written test as a mandatory criteria for promotion to the post of Laboratory Assistant.
- (v) That the recruitment rule was further amended by the respondent concerned and notified on 02.12.2010 in which the criteria have been again changed for the promotion to the post of Laboratory Assistant.

- (vi) That Annadurai & Ors. filed an original application before this Tribunal and this Tribunal disposed of the said original application with certain direction.
- (vii) That being aggrieved by the amendment made in the recruitment rule some of the petitioners preferred a representation dated 21.08.2011 before the respondent concerned and raised objection against the amendment made in the recruitment rule.
- (viii) That on 30.03.2011, the respondent concerned revised the final seniority list of Group C employees drawing grade pay of Rs. 1800, who possess educational qualification of 10<sup>th</sup> and 12<sup>th</sup> passed in science stream under Education Department.
- (ix) That by an order dated 18.10.2011 with order no. 4528, the respondent authorities promoted 31 candidates to the post of Laboratory Assistant.
- (x) That by an order dated 27.02.2013, the respondent concerned forwarded the seniority list of the Laboratory Assistant to the respective authorities.
- (xi) That due to the non-action on the part of the respondent authorities, the applicants made a detailed representation on 18.08.2015 by ventilating their grievances which addressed to Secretary-cum-Director of Education.

4. The respondents filed their reply/written statement on 22.09.2016. In para 8 of the written statement, they have pointed out as under:-

"8. That the prayer of the applicants to amend the Recruitment Notifications for the post of Laboratory Assistants, have no merit at all. It is submitted that the Andaman & Nicobar Administration is competent to amend the recruitment rules. It is also worth mentioning that any Recruitment Rule is the prerogative of the executive discharging legislative function in terms of Article of 309 of the Constitution of India. Employer is the best person to decide all the criteria for appointment/promotion to a particular post. Unless the qualification set out in the Recruitment Rules is contrary to law, beyond the imagination of a prudent person and violative of general law, it cannot be said that the Recruitment Rule is void and need to be amended."

*M. M. by...*

5. They also have highlighted at para 13 of the written statement that 31 candidates have been promoted on 18.10.2011 as per amended recruitment rule of 02.12.2010 in terms of the order of Hon'ble Apex Court of India dated 22.02.2010 in SLP (C) No. 19686-19687/2008.

6. The applicants filed rejoinder to the written statement on 22.06.2018 where at para 4 they reproduced the judgment and order of the Tribunal in case of **Shri Annadurai & Ors. Vs. Sunder Rajan & Ors. (MA 26/A&N/2007, MA 19/A&N/2007 and O.A. 36/A&N/2006)**.

7. We have carefully gone through the submissions and counter submissions of both the parties. The applicants have been appointed as Group 'D' by various orders of the respondent authorities on 21<sup>st</sup> April, 1995, 28.11.1995 and 20.11.1998 respectively. The latest appointment amongst the applicants is of 28.10.1988 as appears from the seniority list notified as on 21.02.2011.

8. The applicants are basically demanding that since they have been recruited as per Recruitment Rules of 17.01.1978, they should be promoted to the post of

*Annadurai*

Laboratory Assistant from Group D without 'written test'. As per Recruitment Rules of 1978, the essential criteria for promotion to Laboratory Assistant are: (i) Matriculation with Science subject concerning the Lab for which appointment is required, (ii) Knowledge of Hindi and Desirable: (i) At least 2<sup>nd</sup> Class Higher Secondary with Science Subject and (ii) Experience of working as Lab. Asstt. in any recognized institution. As regards to the age there is no specific provision. It is also observed that there is no indication of residency period for the Group D post for promotion to the Laboratory Assistant.

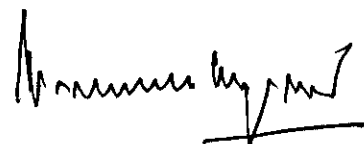
9. This recruitment has been amended by the respondent authority vide their order dated 14.03.2006 wherein it has been indicated that promotion from Group D post to Laboratory Assistant would required (i) XIIth standard passed with Science and (ii) having 5 years regular service in the respective grade and (iii) qualify in the written test etc. This Recruitment Rule has been further amended by the respondent authorities vide Notification dated 02.12.2010 in supersession of all previous Notifications wherein it has been

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set that (i) qualification of Senior Secondary (12<sup>th</sup> standard) passed with Physics, Chemistry and Biology with (ii) residency of 16 years of regular service and (iii) qualify in the written test to be conducted by the Department/Administration.

10. The basic grievance of the applicants is that they have been recruited under the Recruitment Rule of 1978 wherein no provision exist for conducting of written test for promotion to the post of Laboratory Assistant, subsequent amendments for such promotion introducing with written test is disadvantage to them. Accordingly, the applicants pray a direction upon the respondents to amend the Recruitment Rule suitably by protecting their service career.

11. In this connection, the issue is whether the respondent authorities have the power and right to amend the Recruitment Rule suitably from time to time depending upon the expected skill and proficiency of the job for which promotion is to be made. The answer would be in affirmative, unless the amendments on prima facie are with mala fide intentions for the benefit to certain individuals or



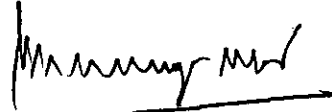


laboratory Assistant (i) raising the educational qualification from Matriculation to 12<sup>th</sup> standard, (ii) fixing residence period and (iii) introducing the written test. Strangely the applicants have not challenged the first two inserted conditions/criteria.

It is indeed understandable that if the promotion has been effected prior to amendment of recruitment rules in 1978, it will be not fair on the part of the respondent authorities to set three modified elements including the 'written test' without being incorporated in the recruitment rules. Equally it would be unfair on the part of the

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this Tribunal dated 31.08.2007 passed in **MA 26/A&N/2007**, **MA 19/A&N/2007** and **O.A. 36/A&N/2006**, as submitted by the applicants, the vacancies which arose prior to the amended Recruitment Rules, came into force, should be filled up as per Rules or Instructions, invoked at that time when the vacancies were arose. This Tribunal in the order dated 20.12.2018 and 27.03.2019, directed the respondents to take instructions on the number of vacancies that had existed at the material point of time of eligibility of the applicants. That has not been supplied by the respondents so far. But it is also equally incumbent on the part of the applicants that they should be able to demonstrate that certain vacancies had occurred during these periods that is prior to 14.03.2006 (1<sup>st</sup> amendment of Recruitment Rule) and they have been denied the promotions. They have failed to do so. The first promotion, as found in the record is of order No.4528 dated 18.10.2011 wherein 31 candidates /individuals have been promoted subject to the outcome of the SLP Civil No. 19686-19687/2008. This obviously demonstrates that these individuals must have been promoted according to the Recruitment Rules as amended



in 2010. If it is so, the present applicants particularly cannot claim to have been discriminated. The 'written test' must have been made applicable and applied to all the eligible candidates and promoted individuals.

13. Keeping in view of the above, we found that the selective demand of the applicants for deletion of one out of three conditions is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed.

14. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)  
MEMBER (A)

(BIDISHA BANERJEE)  
MEMBER (J)