

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No –

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
02 18.06.2018	<p>OA-401/2018 : Tapas Kumar Das & Others Vs The State of West Bengal & Others</p> <p>For the Applicant : Mr. K. Basu, Mr. U. Betal, Learned Advocates.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>OA-404/2018 : Manas Kumar Khatua & Others Vs The State of West Bengal & Others</p> <p>For the Applicant : Mr. G.P. Banerjee Learned Advocate.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>OA-406/2018 : Prabir Das & Others Vs The State of West Bengal & Others</p> <p>For the Applicant : Mr. G.P. Banerjee Learned Advocate.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>OA-431/2018 : Jishnu Bhattacharyya & Others Vs The State of West Bengal & Others</p> <p>For the Applicant : Mr. M. Roy, Learned Advocate.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p>	

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OA-420/2018 : Nimai Chand Manna & Others
Vs
The State of West Bengal & Others

For the Applicant : Sk. Samsul Arefin,
Learned Advocate.

For the Respondents : Mr. S. Ghosh,
Learned Advocate.

Liberty is given to the applicant to file the original application No. 420 of 2018. Let this original application be treated as on day's list.

All original applications are taken up for hearing simultaneously with consent of Learned Counsel representing both parties, as these applications can be disposed of by common order.

There are 66 (sixty six) applicants in OA-401 of 2018 out of which applicants no. 6, 10, 13, 34, 36, 37, 39 and 61 have not been working under the State Government. Moreover, documents in support of educational qualification and experience of applicants no. 31 and 50 have not been submitted. It is relevant to point out that the applicant no. 31 does not want to press for hearing of the application as submitted by Learned Counsel for the applicants on the basis of written instruction given by the said applicant. The other applicants of OA-401 of 2018 claim to have educational qualifications and experience for participating in the selection process for the post of Medical Technologist, Grade-III of different categories in response to the Advertisement No. R/MT/Phar./Physio./48/2/2018 dated May 17, 2018 issued by the respondent, Secretary &

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Controller of Examinations, West Bengal Health Recruitment Board.

The applicant of OA-404 of 2018 claims to have fulfilled eligibility criteria for participating in the selection process for recruitment to the post of Medical Technologist, Grade-III in response to the above advertisement issued by the respondent, Secretary & Controller of Examinations, West Bengal Health Recruitment Board.

There are 8 (eight) applicants in OA- 406 of 2018 out of which only applicant no. 5 and applicant no. 8 have fulfilled eligibility criteria for participating in the selection process for recruitment to the post of Medical Technologist, Grade-III in response to the above advertisement. The other applicants of OA-406 of 2018 have not been working under the Department of Health & Family Welfare, Government of West Bengal.

There are 6 (six) applicants in OA-431 of 2018 out of which applicant no. 1 and 2 and applicant no. 5 and 6 have not been working under the Department of Health & Family Welfare, Government of West Bengal. The applicants no. 3 and 4 claim to have fulfilled eligibility criteria for selection to the post of Medical Technologist, Grade-III in response to the above advertisement and have been working under the Department of Health & Family Welfare, Government of West Bengal.

There are eight (8) applicants in OA-420 of 2018 out of which the applicant No.1, 2, 3, 4 & 8 have not fulfilled eligibility criteria for participating in the selection process for recruitment to the post of Medical Technologist, Grade-III in

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response to the advertisement No. R/MT/Phar./Physio./48/2/2018 issued by the Respondent, Secretary and Controller of Examination, West Bengal Health Recruitment Board. The applicant No. 5,6 & 7 claim to have fulfilled eligibility criteria for participating in the selection process for recruitment to the post of Medical Technologist, Grade III in response to the above advertisement and they have been working under the Department of Health & Family Welfare, Government of West Bengal.

The applicants who have been working under the Department of Health & Family Welfare, Government of West Bengal in the post of Medical Technologist and have fulfilled eligibility criteria to participate in the selection process for recruitment to the post of Medical Technologist, Grade-III, apprehend that their applications may be rejected for crossing the maximum age limit prescribed in the advertisement.

Now, the question for consideration of the Tribunal is whether the applicants can be granted permission to participate in the selection process by the relaxation of age bar mentioned in the advertisement. Mr.K. Basu, Learned Counsel appearing for some of the applicants has referred to order dated March 7, 2014 passed by this Tribunal in OA-281 of 2014 (Ashim Nayak & 13 Ors. V. State of West Bengal & Ors.), order dated March 10, 2016 passed by the Hon'ble High Court in WPST No.125 of 2014 with CAN No. 2159 of 2016 (Dipak Saha & Others V. State of West Bengal & Ors.) and the decision of the Hon'ble Supreme Court in "Keshav Narayan Gupta & Ors. V. Jila Parishad, Shivpuri (MP) &

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Anr.” reported in (1998) 9 SCC 78 and submitted that the Tribunal can grant permission to the applicants to participate in the selection process by relaxation of the age bar, if the applicants are otherwise eligible to apply for the post of Medical Technologist, Grade-III of different categories as mentioned in the advertisement.

Mr. Ghosh, Learned Counsel for the state respondents submits that the candidates who have fulfilled eligibility criteria, may be permitted to participate in the selection process within the last date for submission of the application in terms of the advertisement.

Having heard Learned Counsel representing both parties and on consideration of order dated March 7, 2014 passed by the Tribunal in “Ashim Nayak & 13 Ors. V. State of West Bengal & Ors.” (Supra), we find that in the said case this Tribunal gave direction to the respondents to allow the applicants to participate in the selection process for recruitment to the post of Medical Technologist Grade –III of different categories by way of relaxation of age, subject to fulfilment of other eligibility criteria. Similarly, in the case of “Dipak Saha & Others V. State of West Bengal & Ors” (Supra), the Hon’ble High Court also gave direction to the concerned respondents to allow the applicants to participate in the selection process by relaxation of upper age limit, subject to fulfilment of other eligibility criteria for selection to the post. In “Keshav Narayan Gupta & Ors. V. Jila Parishad, Shivpuri (MP) & Anr.” (Supra) the Hon’ble Supreme Court dealt with the case of one person who was working temporarily as Lower Division Clerk for a period of almost twelve (12) years with short period of break. There was some

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irregularity in the said appointment on temporary basis. The Hon'ble Supreme Court gave direction that when regular appointment to the post of Lower Division Clerk will be made, the case of the concerned applicant must be considered along with other fresh applicants by waiving the age bar in case of the concerned applicant, if necessary. By following the decision of the above cases, we are of the view that the applicants who have been working in the posts of Medical Technologists of different categories on contractual basis for prolonged period of time should not be deprived of the opportunity to participate in the fresh selection process for crossing maximum age limit mentioned in the advertisement. If the applicants are willing to participate in the fresh selection process for recruitment to the post of Medical Technologist Grade-III of different categories on the basis of the advertisement, they should be given the opportunity to participate in the selection process by relaxation of maximum age limit as per advertisement, as the applicants have already been working in the posts of Medical Technologist on contractual basis under the same department.

Accordingly, we direct the respondent, Secretary and Controller of Examinations, West Bengal Health Recruitment Board to allow the applicants who have been working under the Department of Health & Family Welfare, Government of West Bengal as Medical Technologist under Government of West Bengal to participate in the selection process by relaxation of age bar as mentioned in the advertisement dated May 28, 2018, subject to fulfilment of other eligibility criteria. The said applicants are at liberty to fill up the form online within the prescribed time limit

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mentioned in the advertisement dated May 28, 2018. The applicants are also directed to submit hard copy of the application before the Respondent, Secretary and Controller of Examinations, West Bengal Health Recruitment Board within the prescribed time limit given in the advertisement, so that the said Respondent may take precautionary measures of not rejecting the applications of the above applicants who have already been working as Medical Technologist under the Department of Health & Family Welfare, Government of West Bengal on the ground of age bar. The Respondent, Secretary and Controller of Examinations, West Bengal Health Recruitment Board is also directed to ensure acceptance of hard copy of the applications from the above applicants within the prescribed time limit given in the advertisement dated May 28, 2018. The respondent, Secretary and Controller of Examinations, West Bengal Health Recruitment Board is directed to act upon authenticated plain copy of the order passed by the Tribunal.

With the above directions, all five (5) original applications stand disposed of.

Let a plain copy of this order be supplied to both parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib