

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. - OA 617 OF 2023

Md. Janbor Ali & Ors. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Mr. S. Pal, Ms. Ananya Neogi, Learned Advocates
<u>4</u> 22.01.2025	For the State Respondents	:	Mr. R.K. Mondal, Learned Advocate
	For the Private Respondent Nos. VI, VII, VIII and X	:	Mr. Saurav Bhattacharjee, Mrs. Subarna Das, Learned Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

The applicants in this application have prayed for a direction upon the respondent authority for appointment to the post of Physiotherapist (Grade – III). The applicants had earlier filed an application before this Tribunal, being O.A. 85 of 2020 with same prayers. The Tribunal after hearing the matter passed an order dated 22.07.2022 and directed the respondent No.4, Secretary and Controller of Examinations, Health Recruitment Board to consider and dispose of their applications by giving separate replies to the applicants.

In terms of such a direction, the respondent No.4 passed a detailed reasoned order dated 01.03.2023 and after giving reasons rejected the claim of the applicants.

It appears from the reports filed by the applicants that they, being deploma holders, were given lesser marks in the interview compared to those who had Bachelors and Masters qualification. It is submitted by Mr. Pal that in the advertisement, Diploma course in Physiotherapy (DPT) was mentioned as the essential qualification and thus the applicants have fulfilled such requirement. A Bachelors Degree in Physiotherapy (BPT) was only a desirable qualification and not essential. Therefore, being more favourable to those candidates having Bachelors and Masters and awarding them higher marks, the respondent authorities have been, not only arbitrary but showed prejudice against the applicants, being only Diploma holders.

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Responding to the submission of Mr. Pal, Mr. Ghosh and Mr. Mondal, learned State Counsels had drawn attention to page 41, which is the advertisement relating to distribution pattern of marks for the same post. It appears that under this distribution, a two years Diploma course in Physiotherapy (DPT) has been allotted 12 marks, Bachelors in Physiotherapy (BPT) 13 marks and for Masters Degree (MPT) 15 marks. Since the applicants were Diploma holders only, therefore, their marking was within 12 marks only. Had they been holders of Bachelors or Masters, they would have deserved to get higher marks. Since they are only Diploma holders and since the advertisement made it clear that Bachelors and Degree holders would be awarded higher marks, the applicants cannot agitate and demand similar marks at par with the Degree / Master holders.

Mr. Pal files a supplementary application. The private respondents have received copy of the supplementary application. Let a copy be served upon the State respondents.

Mr. Pal, having submitted a supplementary application, enclosing copy of list of Other Backward Classes in West Bengal, downloaded from the website, argues that the two private respondents – Swapan Singha, private respondent No.(ix) and Supal Samanta, private respondent No.(x), appearing at serial Nos. 162 and 166 respectively in the merit list, - have been wrongly shown as belonging to OBC 'A' category. Submission is that only Muslim / Mohammedan persons are covered under OBC 'A' category.

The Tribunal, after examination of the list, enclosed in the supplementary application, does not find such list, segregated as OBC 'A' and OBC 'B'. The list which has total of 180 names of castes / communities have both Muslim / Mohammedan persons and non- Muslims without showing their respective social category as either OBC 'A' and OBC 'B'. From the same list, it is found that Swapan Singha and Supal Samanta, appearing at serial No. 162 and 166 respectively in the merit list, both are shown as belonging to Sukli caste, as per Notification No.84-BCW/RC dated 01.03.1999 read with Notification No.4283-BCW and listed at serial No.57.

From another category-wise OBC list, submitted by Mr. Bhattacharjee, downloaded from the website of Backward Classes Welfare Department, same Sukli caste is listed at serial No.56 as OBC 'A' category. Therefore, the contention of the applicants that that

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private respondent Nos. (ix) and (x), wrongly shown as belonging to OBC 'A' category, is not correct.

The Tribunal also finds in the advertisement, it is shown two years Diploma course in Physiotherapy (DPT) was one of the essential qualification and not a desirable qualification for the post of Physiotherapist (Grade – III). The advertisement also made a provision for desirable qualification for those who were qualified as Bachelors and Masters degree. From this, it is clear that those private respondents, who had scored higher than the applicants, were having Bachelors and Masters degree, therefore, they were given higher marks. Mr. Pal's argument against private respondent Nos. 6 to 8 is that though they possess desirable qualification, but they did not possess essential qualification, which is a fundamental requirement as stipulated in the advertisement. However, Mr. Pal has not been able to present any document as evidence to prove this point. Therefore, Mr. Pal's argument that the private respondent Nos. 6 to 8 were not in possession of the essential qualification, is not satisfactory for want of evidence.

Having observed the above points, the Tribunal does not find any merit in the prayers of this application and, thus, it is disposed of without passing any orders.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.