

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

Serial No. Case No. 639 of 2023 : Shahir Nadim & Ors. versus The State of West Bengal & Ors.
and Case No. 640 of 2023 : Ankita Goswami & Ors. versus The State of West Bengal & Ors.
Date of Case No. 414 of 2024 : Pranab Mondal & Ors. versus The State of West Bengal & Ors.
order

For the Applicants : Mr. D. Chatterjee,
Mr. Rahul Deb Goenka,
Learned Advocates
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29.01.2025

For the State Respondents : Mr. Gautam Pathak Banerjee,
Mr. Manujendra Narayan Roy,
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.

Since the above three original applications have been filed with identical prayers and self-same cause of action has been involved in the same recruitment process, on consent of the parties, these matters are heard analogously and disposed of by passing a common order.

The applicants in these original applications have prayed for a direction to the respondent authorities to give appointment in the post of Constable (Male) 2020. The West Bengal Police Recruitment Board had published an advertisement in its website on 19.01.2020 inviting applications for recruitment to the post of Constable (Male) and Constables (Female) in West Bengal Police – 2020.

Mr. Sannyal, learned counsel for the applicants had submitted by presenting a booklet bearing memo 648 dated 19.04.2023. The first page of this booklet shows the cut off marks for both Constables and Lady Constables under different social groups. The following pages appears to be the result of those candidates, who were not successful in the recruitment process for the post of Constable and Lady Constable of West Bengal Police, 2020. Drawing attention to RTI replies, Mr. Sannyal expresses that still 1547 vacancies are available which were not filled up by the provisionally recommended candidates due to their failure in completing the formalities of medical and PVR. The RTI reply dated 11.8.2023 informs that a total of 8624 candidates were provisionally selected, out of which a total of 7077 candidates have completed their formalities relating to medical examination and Police Verification Roll. It is submitted that as evident from the above information, out of 8624

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candidates provisionally recommended, only 7077 have completed their medical and PVR formalities, thus leaving a vacancy of 1547 still to be filled up.

It is further submitted that no appointment letter has been issued to 1547 provisionally recommended candidates, therefore, as per well settled law, these vacancies, where no appointment letter has been issued, should be filled up by those candidates who were earlier not recommended in the selection process. Hence, these 30 applicants in this application, who had participated but not recommended in the first round of the same process, should be given an opportunity and appointed to the post of Constable against these vacancies.

Mr. Sannyal had cited two judgements and concludes his submissions :

Writ Petition No. 7117 of 2020 (M. Raj Sekhar – vs- The State of Telengana and 03 others) and Civil Appeal No.(S) 10583-10585 of 2017 [@SPECIAL LEAVE PETITION (C) NO(S). 36057-36059 OF 2016] (Munja Praveen & Ors etc. – vs- State of Telengana and Ors etc.).

Mr. Gautam Pathak Banerjee, learned counsel for the State Respondents presents a bunch of papers showing the category wise cut-off marks for both Constables and Lady Constables and also the list of candidates who were not successful in the recruitment process. After a random checking of the names in this list, the Tribunal finds that the applicants who were not recommended in the selection process had scored lesser than the cut-off marks set by the Recruitment Board. For instance, appearing at serial No. 6093 – Atanu Pal belonging to OBC(B) category had scored 56.92, whereas in the cut off marks under OBC (B) it was 57.25. Similarly, appearing at serial No. 4417 – Mithun Sardar belonging to SC Category had scored 54.17, whereas for this category, the cut-off marks fixed by the Board was 54.25.

Submission of Mr. Banerjee is that as evident from these records none of the applicants, who had participated had scored higher than the cut-off marks set for the post of Constable. Since they were not successful candidates, they were not recommended by the Board for appointment to the post of Constable.

Further submission is that the Respondent authority had already replied to the RTI questions filed by one of the applicants that the resultant vacancies of the selection process of 2017 have been carried forward to the next year's selection process. Submission of Mr. Banerjee is that even if such vacancy has occurred during the examination of 2020, these

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were as per Rules carried forward in the next recruitment process. Therefore, the prayer of the applicants to fill up these vacancies does not arise.

Mr. Banerjee also informs that these applicants, dissatisfied with the proceedings of the Tribunal had approached the Hon'ble High Court, which after hearing the matter dismissed their petition with the following observations :-

"...Indisputably, the petitioners have not been provisionally selected. From the contents of the recruitment notification, it also does not appear that the resultant vacancies that may occur, cannot be carried forward to the next recruitment process. The petitioners did not challenge the said notification and willingly participated in the recruitment process. Being unsuccessful, no indefeasible legal right has accrued in their favour..."

Mr. Banerjee also submits that the application is not maintainable for the simple reason that it was filed by the unsuccessful candidates, who willingly participated in the selection process but turned around to challenge the selection process once they were not successful.

Mr. S. Sanyal, learned Senior Counsel supplements the following submissions :-

(i) The very set of papers shown by Mr. Banerjee earlier having titled "Not Recommended" does not mean that the applicants were unsuccessful in the selection process.

(ii) It is also pointed out that it is incorrect on the part of the Respondents to say that these vacancies have occurred due to recommended candidates not completing their medicals and PVRs successfully. A vacancy, as Mr. Sanyal felt ought to be called vacant only after an appointment letter has been issued. Since for these vacancies, no appointment letters were issued, therefore, the question of these vacant seats being carried forward to the next year does not arise.

Mr. M.N. Roy, learned State Counsel refers to two judgements cited by Mr. Sanyal during the last date of hearing and points out the relevant para No. 10 in (2017) 14 SCC 797 – Munja Praveen and others – versus- State of Telangana and others by which the Hon'ble Court allowed filling of all the vacancies from the merit list downwards. His submission is

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that unlike the scenario in the case relied by Mr. Sanyal in which the vacancies were filled up from the panel, in this case, however, no such panel of wait listed candidates was maintained.

From the submissions of the learned counsels representing both the sides, it has become crystal clear that the applicants were not successful in the recruitment process for the post of Constable (Male) and Constables (Female) conducted by the West Bengal Police Recruitment Board in 2020. Such fact has neither been disputed nor made the core prayer in these applications. From the few instances cited above, it is not in dispute that all the applicants scored below the cut-off marks in the social categories they belong to. However, the main thrust of the applications of the applicants is that, since the number of seats are lying vacant, therefore, these applicants be accommodated in these vacancies. It is not convincing to the Tribunal that how unsuccessful candidates can claim for filling up the vacant posts with their candidature. The plain and simple fact is that they participated in the entire selection process, but were unsuccessful. The question of filling up these vacancies with unsuccessful candidates in the same recruitment process does not arise at all. The applicants had also prayed before the Hon'ble Calcutta High Court, which had heard and dismissed the petition with the following observations:

“...Indisputably, the petitioners have not been provisionally selected. From the contents of the recruitment notification, it also does not appear that the resultant vacancies that may occur, cannot be carried forward to the next recruitment process. The petitioners did not challenge the said notification and willingly participated in the recruitment process. Being unsuccessful, no indefeasible legal right has accrued in their favour...”.

It is also clear from the above cited paragraph that the applicants had not challenged the recruitment notification and willingly participated in the recruitment process. The Hon'ble Court's observation is that being unsuccessful in the recruitment process, “no indefeasible legal right has accrued in their favour” . Be that as it is, the Tribunal has properly examined the matter in the light of facts in this case and has come to this conclusion that the applicants being unsuccessful in the recruitment process cannot turn around and

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question the very legality of the recruitment process and claim their candidature in filling up the vacant posts. The Tribunal is also satisfied that the Recruitment Board did not commit any error in deciding that these vacancies would be carried forward to the next year's selection process.

In a similar case, the Hon'ble Supreme Court of India in Civil Appeal No. 2473 of 2022 recorded the following observations:

".....we are of the view that the appellant cannot claim appointment on unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgement and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree."

In view of the above observations, the prayers of the applicants in these applications for a direction to give appointments to them in the existing vacant posts have no merit and thus, disposed of without passing any orders.

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

SCN.