

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- 664 of 2021

RATNA DEY VERSUS – The State of West Bengal & Ors..

Serial No. and Date of order	For the Applicant	:	Mrs. S. Das, Advocate
	For the State Respondents	:	Mr. S. Ghosh, Advocate
<u>20</u> 29.02.2024	For the P.S.C. W.B.	:	Mr. S. Bhattacharjee, 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.

On consent of the learned counsels for the parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the list of recommended candidates for the post of Industrial Development Officer. One advertisement No. 10/2019 was notified by the P.S.C., W.B. to recruit the Industrial Development Officers on behalf of the Directorate of Micro and Small Enterprises with the following two essential qualifications :-

- i) Ability to read, write and speak in Bengali.
- ii) A Degree of a recognised University/Diploma in Engineering or Technology of any recognised University/Institution.

Submitting on behalf of the applicant, Mr. Maity, learned counsel refers to para 4 of the advertisement, relevant portion is as under :-

- i) The Commission may fix qualifying cut off marks for all the categories of the vacancies in each level of examination, i.e. written, interview and aggregate.

Mr. Maity submits that the Commission did not fix any such cut off marks at any stages as mentioned above. Further he refers to the reply given by the Commission to the applicant which states that she has scored only 60 marks in the interview out of 100 marks. Another reply in the R.T.L response

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from the Commission is quoted as under :-

- i) “Reply to query no. d: The selection of suitable candidates for the post in question has been done in two parts, viz. Screening test and Interview. The screening test has been conducted for short listing candidates for Interview. Then the shortlisted candidates have been called to interview on the basis of their merit. But the final merit list has been prepared only on the basis of marks obtained in the Interview.”

It appears from the list of successful candidates recommended for recruitment to the post of I.D.O. appearing at page 29 and 30, the last successful candidate under UR category to which the applicant belongs had obtained 65 marks. From the R.T.I. reply it is understood that since the applicant had scored only 60 marks in the interview, thus she failed to qualify and her name did not figure in the list of recommended candidates for the post of I.D.O.

In concluding his submission, Mr. Maity reiterates his grounds in challenging the list of successful candidates on the following grounds :-

- i) In the advertisement there was no indication that the final selection of the candidates will be based solely on interview. On the contrary, the advertisement rather mention cut off marks for all the categories. However, the Commission published the final list stating that the marks obtained by the successful candidates were based only on interview.
- ii) Thus, the selection for the post of I.D.O. based only on interview is not only arbitrary but is also not legally tenable.

Appearing on behalf of the Commission, Mr. Basu submits that as clear from the order of this Tribunal dated 11.01.2022, the applicant was well aware of the fact that such selection would be based only on interview. Such information was also given in both the Advertisement and the “Important Announcements” published by the Commission. Therefore, the contention of the applicant’s side that such selection only on the basis of interview being arbitrary is not a valid point. Secondly, Mr. Basu responds to the

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judgments earlier cited by Mr. Maiti, learned counsel for the applicant, and argues that context of these judgements are completely different from the present application. Therefore, these judgements are not relevant to be relied upon in this matter.

Attention is also drawn by Mr. Basu to the page "*Information published by the Commission as part of the advertisement*". As per para 4 of this Information, Mr. Basu emphasises that the fact such selection would be based on the interview had been clearly indicated to the aspiring candidates. The relevant line as contained in this information is stated as "*where the number of applications received in response to the advertisement is large and it is not convenient or possible for the Commission to interview all the applicants, the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of either higher qualifications in the relevant subjects/higher standard of marks/grade obtained in the essential qualifications or on the basis of a Screening Test/Written Test.*" Since the number of applicants was very large for the selection to this post, the Commission had conducted a Screening Test. Candidates successful in such Screening Test (MCQ – 100 marks) were invited to appear for the interview. The applicant being successful in the Screening Test was invited to appear for the interview test. But having scored only 60, whereas the last successful candidate having scored 65 under the same unreserved category, her name was not recommended.

After hearing the submissions of the learned counsels and after examination of the records in this application, the Tribunal finds that the applicant was well aware of the fact that the final selection will be based only upon success in the interview. It was also made aware to the candidates by the Commission that the objective of the screening test was only to filter the large number of applicants. It is also clear that, though the applicant was successful in the screening test and was interviewed, but she was not able to obtain such marks which would have helped her name to be recommended. As has been made clear by the Commission, the last successful candidates in the Unreserved category to which the applicant belong, had scored 65; whereas the applicant's score was only 60. The argument of Mr. Maity that the Commission failed to fix any cut-off marks at any stage does not appear to be relevant for the reason that the Commission had already announced that in the factuality of large number of candidates there would be a screening test and the final selection would be based only on the basis of interview marks. Having participated in both the tiers of the selection process and without any complaints, the applicant has

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neither protested this process nor the interview marks of 60 she had obtained. Having published the advertisement and the information bulletin containing all relevant information for the benefit of candidates, the Commission cannot be blamed for having digressed from its announcements. The applicant also does not appear to have any complaints regarding the procedure followed by the Commission. Moreover, the Tribunal finds it unconvincing that the applicant, having participated in the entire selection process without any complaints, has come up before this Tribunal agitating about the result of the selection process. The Tribunal in this matter and similar matters is guided by a judgement of the Apex Court in 2017(4) SCC 357 in the matter of Ashok Kumar Sharma & Ors. vs. The State of Bihar & Ors. in which the Apex Court has unequivocally made it clear that “the appellants participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the petition the principle of estoppels would operate”. Similar to the case cited above, the Tribunal also reiterates that the applicant though fully aware, did not protest at any stage of the selection process and waited for the final result to be declared. Had the final result been in her favour, would she have complained? Therefore, having participated and not being successful she cannot at a later stage turn around and complain that the process was unfair because the result was not in her favour.

Having observed the above observations, the Tribunal finds that the prayer of the applicant for setting aside the list of recommending candidates is not worth the merit and the question of quashing the merit list having 118 successful candidates does not arise.

In view of the above observations, this application is disposed of without passing any order.

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

SCN.