

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)**

**Case No. – OA 136 of 2023**

**Tanmoy Maity -- VERSUS – The State of West Bengal & Ors.**

Serial No. and Date of order	For the Applicant	: Mr. S. Dutta, Ld. Advocate.
	For the State Respondent Nos. 2,3 & 4	: Mr. D. Kole, Ld. Advocate.
<u>05</u> 16.07.2024	For the State Respondent Nos. 1 & 5	: Mr. G. Halder, Ld. Advocate.
	For the Added Respondent	: Mr. B. Nandy, Ld. Advocate.

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Vakalatnama filed by Mr. B. Nandy on behalf of the added respondent, Dr. Lipi Naskar be kept on record.

By a direction of this Tribunal given on the last date of hearing on 30.04.2024, Mr. Kole, learned counsel representing the West Bengal Health Recruitment Board (in short, "WBHRB") presents a copy of reasoned order dated 14.09.2023 passed by the Secretary and Controller of Examinations, WBHRB. In the direction, the WBHRB was asked as to how and why Dr. Lipi Naskar was given an appointment at a later date. The WBHRB has replied that it was due to discovery of a new fact that the marks obtained by Dr. Naskar was equal to the marks obtained by the last recommended candidate in the SC category to which she belongs. The reasoned order also points out that the advise given to the WBHRB by the Department for filling up the vacant posts was within the validity of the panel. The Tribunal had noted earlier that the Department had advised the WBHRB to recommend the names of 8 candidates in different categories for the same post which were not filled up from the list of candidates recommended by the WBHRB.

Having come to know that Dr. Naskar has been given appointment, Mr. Dutta, learned counsel for the applicant argues that the WBHRB has now recommended the name of Dr. Naskar even though it had earlier communicated its decision that the WBHRB does not maintain any list of unsuccessful candidates or any panel of wait listed candidates. The WBHRB had in its minutes of the resolution in the 180<sup>th</sup> meeting had resolved the

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following :

*“..... G. WBHRB was requested to recommend another fresh 8 candidates (UR-6, SC-1, OBC-A-1), from the existing Panel of Homeopathic Medical Officer.*

*WBHRB published Panels in 1:1 ratio with the vacancies. So there is no scope of recommending any fresh name from the Panels as all the names in the Panels had already been sent to Department.*

*Moreover, there is no available Overall Performance List of all candidates, either in the system or in a form of signed hard copy by the Secretary & Controller of Examination and Chairman, from which 2<sup>nd</sup> Panel List of the candidates could be generated.*

*In this situation, in supersession of earlier decision, the Board resolved that, H&FW Department would be intimated that there is no available names in the Panel, from which further recommendation of 8 names could be made. It may also be intimated that, there is no available Overall Performance List of all candidates, either in the system or in a form of signed hard copy by the Secretary & Controller of Examination and Chairman, from which 2<sup>nd</sup> Panel List of the candidates could be generated.....”*

From the submissions of the learned counsels and on examination of the records in this application, the Tribunal has observed the following :

By correspondence dated 08.09.2022, the Department of Health & Family Welfare had advised the WBHRB to recommend a “fresh list of 8 candidates from the existing panel of Homeopathic Medical Officers.” From the list of 243 recommended candidates, 8 of them had not joined. Thus, there arose 6 vacancies - UR, 1-OBC-A and 1-SC. In response to the Department’s advice, the WBHRB decided to inform the Department that it does not maintain any panel of unsuccessful candidates. The contention of the applicant’s side is that despite such a decision, the WBHRB, however, recommended the name of Dr. Lipi Naskar. The reasoned order was passed by the WBHRB dated 14.09.2023 giving the reasons why the name Dr. Naskar had to be recommended to the Department for appointment. On examination of this detailed reasoned order, it is evident that, she having scored the same marks in her category as the last successful candidate, being 78 was recommended. It was the opinion of the WBHRB that the applicant who had scored equal marks as the last unsuccessful candidate in the same category deserves to be recommended especially when such vacancy is available. The

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WBHRB states that it became aware of the eligibility of Dr. Naskar only when she herself presented a copy of the result sheet downloaded from the website of the WBHRB. In the application filed by Dr. Lipi Naskar in OA 01 of 2022, the Tribunal had directed the WBHRB to consider her case “if she is entitled and as per Rules”. Contention of Dr. Tanmoy Maity, the applicant in this application is that he, like Dr. Naskar was also awarded equal marks as obtained by the last successful candidate in his category – UR category. It is evident from the revised panel published by the WBHRB on 20.12.2019 that one, Shofiara Kamreen at Sl. No. 126 was recommended after having obtained a total of 82.5 marks in the UR category. In the reply to the applicant, SPIO of the WBHRB on 28.07.2022 had intimated that the applicant had obtained a total of 82.5 marks and was placed 128<sup>th</sup> rank in General category.

Another area of concern being the Finance Department’s Notification No. 7196-F(P) dated 02.07.2010. By this notification, the Finance Department had kept the validity of any such panel valid only for one year. In this case, the final list of successful candidates was published on 31.12.2021 and if one adheres to the Finance Department’s Notification regarding the validity of any panel, the panel would have expired by 30.12.2022. The appointment letter issued to Dr. Lipi Naskar was 10.11.2023, after expiry of the validity of the panel of successful candidates published by the WBHRB on 31.12.2021. The WBHRB in its reasoned order justifies such recommendation of the name of Dr. Naskar even beyond the expiry of the validity of the panel on the ground that the Department had intimated and advised the WBHRB to fill up the 8 vacancies on 08.09.2022 which was within the validity period of the panel. Submission of the learned counsel for the applicant is that if the name of Dr. Naskar was recommended for appointment at a later date, relying on the correspondence made by the Department on 08.09.2022, then the same consideration could be taken by the WBHRB for recommending the name of this applicant also. Submission of Mr. Dutta is that the primary reason for recommendation of Dr. Naskar was she obtained similar marks as obtained by the last successful candidate in her category. Submission is that this applicant also has obtained similar marks as obtained by the last successful candidate in

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his category. Therefore, the two grounds relied on by the WBHRB while recommending the name of Dr. Naskar can also be applicable for this applicant.

From the above observations, the Tribunal is clear in its understanding that if Dr. Naskar was recommended for appointment on the two grounds as stated in the reasoned order, the same can also be applied in this case. There is no dispute as to the fact that Dr. Tanmoy Maity also stands in the same footing as stood by Dr. Naskar; both have scored the same marks as the last successful candidate in their respective categories. So far the validity of the panel is concerned, the Tribunal finds that the reason given by the WBHRB for recommending the name of Dr. Naskar beyond the validity of the panel, also applies in the case of this applicant. The Department in its correspondence dated 08.09.2022 had only stated that there are 8 vacancies which need to be filled up by the names recommended by the WBHRB.

In view of the above observations, it is the direction of this Tribunal to the Respondent No. 4, the Secretary and Controller of Examinations to consider the prayer of this applicant, Dr. Tanmoy Maity for recommendation in the post of Homeopathic Medical Officer, if such vacancy is still available and provided other eligibility criterias are fulfilled. The final decision to be taken by the WBHRB in this regard be completed within a period of three (03) months from the date of communication of this order.

Accordingly, this application is **disposed of**.

**SAYEED AHMED BABA**  
**Officiating Chairperson & Member (A)**

CSM/SS