

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 261 of 2023

Shri Sandip Kumar Roy. -- VERSUS – The State of West Bengal & Others

Serial No. and Date of order	For the Applicant	: Mr. Pradip Kumar Roy, Learned Senior Advocate. Mr. Shaon Bhattacharya, Learned Advocate.
<u>06</u> 29.01.2025	For the State Respondents	: Mr. Goutam Pathak Banerjee, Learned Advocate.
	For the Public Service Commission, West Bengal.	: Mr. Saurav Bhattacharjee, Learned 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 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The case of the applicant in short is that, the applicant participated in a selection process of West Bengal Civil (Exe.) Etc. Examination, 2011, conducted by the West Bengal Public Service Commission. According to the applicant, while filing the form for the said examination, the candidates were required to give their preferences for the service they wish to join, if selected. The applicant accordingly gave Group-B service i.e., West Bengal Police Service as his first preference. The said examination consisted of Written and Personality Test and the final selection is then made on the basis of the aggregate marks so obtained by the candidate in both Written and Personality Test taken altogether by the Commission. In the instance case, the applicant on getting the qualifying marks in the written examination in both Group-A and B services was called for Personality Test in both services. Accordingly, the applicant appeared in both the personality tests held on 19.02.2013 for Group-A services and on 02.05.2013 for Group-B services. Ultimately, the Commission recommended the applicant for selection in Group-A services and the Government of West Bengal offered him an appointment as Deputy Excise Collector vide a Notification dated 6th January, 2014. The applicant in terms of the appointment letter joined the said West Bengal Excise Services. Being aggrieved by the recommendation of the Commission where in the applicants were recommended for Group-A services and not Group-B services which was

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his first preference, approached the authorities under the provisions of the Right to Information Act and finally, the issue went up to the Hon'ble High Court at Calcutta by means of filing a writ petition by the applicant, being WPA 8047 of 2022. The said writ petition was disposed of by Hon'ble Justice Moushumi Bhattacharya by an order dated 18.07.2022 inter alia holding "*.....The Court is of the view that the merit list indicates the position of the candidates and further shows that the petitioner was outside the zone of consideration for the Group-B service which was the petitioner's choice. Notwithstanding the initial excuse given, the Commission has now produced the relevant records before the Court. Considering the prayer in the writ petition, there is no remaining issue which the Court can go into. The merit list gives a fresh cause of action to the petitioner*".

With the order of the Hon'ble High Court in WPA 8047 of 2022, the applicant approached this Tribunal challenging the validity of the decision of the Commission in recommending the applicant in Group-A services and not in Group-B services, as that was the first choice of the applicant. Challenging marks distribution of the applicant's personality test, the applicant approached this Tribunal ventilating his grievances in this Original Application. It is an admitted and undisputed position that, the applicant got 512 marks in the Written examination securing the qualifying marks in both Group-A and Group-B services and was eligible for the Personality Test in both the services. Accordingly, he was called for the Personality Test for both the services on two different dates by the Commission on 19.02.2013 for Group-A services and on 02.05.2013 for Group-B services.

It is the case of the applicant that on 19.02.2013 when he appeared for the Personality Test for Group-A services, there was proper quorum and he was given 158 marks in the Personality Test for Group-A services and secured 28th rank. But unfortunately, on 02.05.2013 when he appeared for the Personality Test for Group-B services, there was no proper quorum and only two interviewers were present namely, Shri Nurul Haque, the then Chairman of the Commission and one Shri Tapan Chattopadhyay in place of required four

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Members as evident from the replies given to him by the Commission in terms of provisions of the RTI Act, 2005. As a result of being interviewed by only two Members, the applicant secured only 80 marks in the Personality Test for Group-B services, making any aggregate for 592 marks and secured 39th rank in the said Group-B services. Contention is that, had there been all four Members present in this Personality Test, his marks would have been definitely higher than 80.

Explaining the points noted in the reply of the Commission, Mr. Bhattacharjee, draws my attention to para 9 of the reply against the compliant of the applicant that in his interview for Group-B service, the Commission had interviewed him with just two members instead of four. In the reply, at para 9, the Commission responds that three members including the presiding member - Chairman of the Commission had interviewed the applicant for his interview for Group-B service of WBCS (Exe.). The reply further states that a total of 80 marks were allotted to the applicant during his interview for the Group-B services. It also stated that the applicant had obtained 158 marks in the interview for Group-A services. By scoring a total of 592 marks including the written examination and interview, the applicant was placed in the rank of 39th. It is also stated that during the year the examination was conducted, there were only 16 vacancies in the Group-B services for UR candidates.

Disagreeing with the submission of Mr. Bhattacharjee and the statements made in their reply, Mr. Roy drew my attention to para 6 (c) of page 4 of the main application. He emphasised that during the said interview of the applicant for Group-B services, only two members, namely Shri Nurul Haque, the then Chairman of the Commission and Shri Tapan Chattopadhyay were present to interview the applicant. Mr. Roy also submits that such fact of two members present in the interview have not been disagreed by the Commission in the reply. The Additional Director General of Police as a technical member of the Interview Board was not present on that day. By stating in their reply at para 6 that statements made by the applicant from 6 (b) to 6(d) are matters of record, it is to be appreciated that the respondent authority has agreed with the

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contention of the applicant in his original application appearing at para 6 (c) in which the name of two members were mentioned.

Mr. Roy also refers to a copy of the RTI application made by the applicant before the Commission which is dated 11.06.2018. In this application, at points No. 2, 3 and 4, the applicant had requested for the final score sheets of the selected candidates. The purpose of the applicant was that once the Commission shares such score sheet, it would become abundantly clear of not only the total marks he obtained, but also the number of members who interviewed him. Mr. Roy argues that although the Commission replied to his queries in the RTI Act, but the Commission refrained from giving any specific reply to his question 6 of the RTI Act.

In reply to the query, the Commission in its reply dated 25.05.2028 stated the following :

“The Interview Board of West Bengal Civil Service (Exe.) Etc. Examination, 2011 for Group-B Service were conducted by 3 members including the presiding member i.e., the Member of the Commission”.

Submission of Mr. Roy is that the Commission avoided giving the specific answer to question 6 relating to how many members had interviewed the applicant. Attention was further drawn to the following reply given by the Commission to his Query No. 8:-

“The member who interviewed you were allotted individual marks.”

It has also been pointed out that against the RTI query No.2 dated 11.06.2018 requesting for the final score sheet of the selected candidates in WBCS Group-B Service 2011 encompassing their respective marks for mains and interview, the Commission in their reply only provided the final mark sheet. Mr. Roy argues that apart from the final mark sheet which is in the written exam, the Commission failed to provide the score sheet for the interview. Aggrieved by non cooperation of the Commission in providing copy of score sheet for the interview, the applicant approached the West Bengal

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Information Commission. The West Bengal Information Commission in its order dated 16.11.2021 had directed the Commission to provide the informations in respect of query No. 2 and 4 within a period of three weeks. Despite such a direction, the Commission did not provide any specific information pertaining to his query No.2 and 4. The reply given by the Commission dated 23.02.2022 against the query No. 4, the Commission stated the following:-

“For proper preservation of examination related documents pest control work is undertaken on regular basis in the office of the commission. But owing to situation arising out of pandemic which is still prevailing, the said pest control work could not be undertaken. As a result, several documents including the information sought for by the candidate were irretrievably damaged.”

Mr. Roy expressed his surprise that how could the mark sheets of the same exam was provided to the applicant, but the score sheet and the preference list of the same exam of the same year has been damaged by pests and cannot be provided to the applicant! Mr. Roy submits that since it is an admitted fact from the Commission’s side that the records pertaining to the interview’s score sheets are not available due to damage by pests, therefore, relying on a judgement of High Court of Madhya Pradesh in Ishita Patel-Versus-Rajeev Gandhi Prodigiki Vishwvidhalaya (RGPV) – reported in 2024 SCC OnLine MP 3510, he prays for a direction to the Commission to follow the method adopted in the case cited above which is termed as, “proportionate quotient” (PQ method).

Mr. Roy further argues that, keeping in mind the principles of ‘proportionate quotient’ and after long lapse of nearly 12 years from the date of his personality test, which took place on 02.05.2013 asking the applicant to re-take the personality test is against the ratio of the judgement of Safna K. M. v. University of Kerala reported in 2021 SCC OnLine Ker 9361 by the Hon’ble Kerala High Court.

Mr. Roy after concluded his submissions by referring to the prayers in

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this application for awarding him full marks considering the absence of the two members. The prayer in the supplementary is for a direction to the respondent authorities to appoint the applicant in WBCS Group-B services with retrospective seniority after creating a supernumerary post.

Mr. G. P. Banerjee has submitted that this recruitment process relates to 2011 and in 2014 and all the appointments were given to the successful candidates and thus no vacancy exists for the exam held in 2011.

After hearing the submissions of the learned advocates representing the respective parties and on pursuing the available records, it is an undisputed fact, that the applicant got 512 marks in the Written examination and got 152 marks in the Personality Test for Group-A services. The dispute is regarding the quorum for the Personality Test for Group-B services on 02.05.2013. It was the contention of Mr. Roy, learned senior advocate for the applicant that, in paragraph 6 (c) of the Original Application, the applicant had clearly and without any ambiguity had stated that there were only two members, namely Shri Nurul Haque, the then Chairman of the Commission and Shri Tapan Chattopadhyay, instead of the required four Members to form a proper quorum. Order 8 of the Court of Civil Procedure specifically deals with the written statement of the Defendants in the plicant. In the reply filed by the Commission, there is no specific denial with regard to the averments made in paragraph 6 (c) in the instant Original Application. Order 8 Rule 4 deals with evasive denial. This Rule clearly states that when the defendant denies the allegation in the plicant, he must not do so evasively but answer in point of substance. Order 8 Rule 5 deals with "Specific Denial". It is a well-settled Principles of Law that, if the allegations are not specifically denied and / or controverted, the presumption would be admittance of the allegation made in the plicant or as the case may be.

In the entire reply of the Commission there is no specific statement with regard to the contention of the applicant regarding presence of only two Members. The fact of absence of two other Expert Committee Members

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including one A.D.G.P. rank officer has not been denied. Having regard to the provisions of the Civil Procedure Code, as mentioned herein, I am of the opinion that, the Commission had practically accepted contentions of the applicant in his Original Application and / or the presumption of an admittance by the Commission with regard to the core issue involved in the instant application.

Ishita Patel-Versus-Rajeev Gandhi Prodrugiki Vishwvidhalaya (R.G.P.V.) through its Registrar and Another (Supra), the Hon'ble Division Bench of Hon'ble High Court of Madhya Pradesh after going through judgments of different Hon'ble High Courts, their Lordships allowed the same by directing the Respondent Authorities to issue fresh and corrected marksheet to the petitioner after granting average marks for the subject of "Basic Computer Engineering" Theory.

The facts of the present case are somewhat similar to the judgment cited above. The Commission in an unambiguous manner had stated that during Pandemic Covid-19 the information sought by the applicant could not be supplied, which was irretrievably damaged by pest. The records have been damaged and not retrievable, the applicant is not at fault. As such I am of the opinion that the judgment cited above is very much relevant in the given facts and circumstances of the case. The judgment of the Hon'ble Division Bench is quoted herein which is as follows :-

".....4. From a perusal of a record, it is clear that there is no dispute with respect to submission of the answer sheet by the petitioner to the Respondent No. 2 / College. The documents annexed along with the reply by the respondent No. 2 at Page No. 8 and 10 show the receipt of the petitioner's answer sheet wherein her name and roll number finds place at Serial No. 39. The said answer sheets were duly forwarded on 01.07.2021 by the Controller of the Examination but the answer sheet of the petitioner was not received by the university which is clear from the stand taken in the return. However, the fact remains that the answer sheet of the petitioner has been misplaced either

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by the College or by the University as the respondent No. 2 is admitting the submission of answer sheet of “Basic Computer Engineering” subject by the petitioner with the respondent No. 2. Therefore, the petitioner cannot be held to be at fault for the same. However, if the answer sheet is not received by the University / respondent No. 1, then the same may be due to fault of either of the respondent No. 1 or respondent No. 2.

*5. A specific question was put to the learned counsel for the respondent No. 1 / University that in such circumstances when the answer sheet of the student is lost either by the College or University what is the provision to handle such a situation. He fairly submits that there is no provision provided under the Universities Ordinance to deal with such a situation. However, he fairly admits the fact that in terms of various decisions by the Courts, the student cannot be said to be at fault and average marks are required to be granted to him. The law with respect to the aforesaid is settled by the various cases of different High Courts. In the case of **Radha Devi-Vs.- Himachal Pradesh University: CWP No. 807 of 2023 decided on 22.05.2023 by the High Court of Himachal Pradesh**, it is observed thus :-*

“41. In such situation, the method known as ‘proportionate quotient’ (PQ method) could only be adopted, which seems to be more reasonable for redressing the grievance of the petitioner. The proportionate quotient is based upon the proportionate marks to be awarded to the petitioner on the basis of average marks obtained by her in other papers of B.Ed. Degree, which, she has already qualified. Ordered accordingly.”

*6. In the case of **Saurabh Gokul Shelar-Vs.-Vice Chancellor : Writ Petition (L) No. 3378 of 2017 decided by the High Court of Judicature at Bombay on 12.12.2017**, it is observed as follows :-*

“5. In the peculiar facts and circumstances of the case, we find that it will be in the interest of justice that the Respondent – University is directed to allot an average of the marks obtained by the petitioner in remaining subjects. We find that if that is done, that will reflect the real merit of the petitioner in

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the subject of which the main answer sheet is lost”.

*7. In the case of **Safna K. M. Vs. University of Kerala : WP((C) No. 17883 of 2021 decided by the High Court of Kerala on 08.09.2021**, it is observed as under :*

“6. Conceded position on record is that the petitioner owing to medical condition could not undertake the 2nd semester at the scheduled time and after recovering from the same, sat in the examination way back in June, 2020, but her result as noticed above against a particular subject has been shown as blank. Loss of the answer sheets have not been denied by the University and in that background of the matter, meeting has been scheduled for This Court cannot remain as a mute spectator as to whether the scheduled meeting would culminate into some effective decision or not as by that time the last date of submission of the application for B.Ed. may expire.

Thus, I dispose of the writ petition by issuing directions to the Controller of Examinations of the University of Kerala to ponder the task of awarding the average marks keeping in view her record and result in the other examinations and declare the result by 14th of September, 2021.”

8. Looking to the peculiar facts and circumstances of the present case as well as the fact that there is admission on the part of the respondent No. 2 regarding receipt of answer sheet of “Basic Computer Engineering” Theory subject coupled with the judgments passed in the aforesaid cases, the petitioner cannot be held responsible for loss of the answer sheet of “Basic Computer Engineering” subject, therefore, she is entitled for grant of average marks in the aforesaid subject. As the petitioner has already passed the semesters in pursuance to various interim orders passed by this Court and only a final semester is required to be attended by her, under these circumstances, once this Court has arrived at a conclusion that the petitioner is entitled for grant of average marks in the theory subject of “Basic Computer Engineering”, the respondents are directed to permit the petitioner to participate in the Final Semester Examination. The respondents are also directed to issue a fresh and

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corrected mark-sheet to the petitioner after granting her average marks in the subject of 'Basic Computer Engineering' theory subject."

Mr. Roy also cited the case of **Safna K. M. v. University of Kerala (Supra)**. In the said, His Lordship was also dealing with a similar facts, in the said case the due to the latches of the University certain bundles of papers were lost and as a result the petitioner therein got blank in one paper. The Judgement of the **Hon'ble Kerala High Court** in the case of **Safna K. M. v. University of Kerala** is as follows:- ".....4. Clause 12(b) of the Revised Guidelines for revaluation of answer books of University Examinations of Kerala University is extracted hereinbelow:-

"12(b) In case, the answerbook is found to be irretrievable, the candidate will be given another opportunity to write the examination in the missing paper, in accordance with the same scheme and syllabus, without charging the Examination fee."

5. No doubt it reveals that the candidate in such circumstances, is permitted to sit in the examination without charging of the fees, but the said fact has not been appreciated by the Court in the judgement in W.P.(C) No. 9696/2017. For the sake of brevity paragraph 4, 5 and 6 of the judgment reads thus:-

"4. From this it is evident that the University could not have been more negligent in the case of the petitioner. Paragraph 7 of the statement reveals that while carelessness has been accepted as one of the possibilities, without any basis it is concluded that the loss of answer scripts may be with the deliberate intention of helping the student. I asked the learned Standing Counsel for the University a specific question as to on what is the basis on which this conclusion has been arrived at and no satisfactory answer could be given. In these circumstances, I can only hold that WPC No. 9696/07 the conclusion of the Committee which has been accepted by the University is nothing but perverse.

5. A reading of the statement further shows that it is on the aforesaid

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conclusion that the Committee did not accept the recommendation that average marks of the other written papers need not be given to the petitioner. I should also mention that the respondents are not disputing the case of the petitioner that this is a system of giving average marks in a situation like this. Since the basis on which the recommendation was not accepted is perverse, I should hold that the petitioner is entitled to be given average marks of the other papers for the lost paper also. Therefore, I direct the respondents that the petitioner shall be given the average marks of the other written papers, for the paper in Physics also. This, the respondent shall do as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

6. At one stage of the hearing the learned counsel for the University suggested that a separate examination can be held for the petitioner. This was WPC No. 9696/07 considered by me and I am of the view that this is an impractical suggestion. From the facts of the case it is evident that the petitioner had completed her course way back in 2002 and she had competed her course in 2004. She having settled down in her life and at this distance of time I do not think, it is fair to ask the petitioner to sit for the examination once again especially when all these have happened only on account of the fault and negligence on the part of the University.”

6. Conceded position on record is that the petitioner owing to medical condition could not undertake the 2 semester at the scheduled time and after recovering from the same, sat in the examination way back in June, 2020, but her result as noticed above against a particular subject has been shown as blank. Loss of the answer sheets have not been denied by the University and in that background of the matter, meeting has been scheduled for. This Court cannot remain as a mute spectator as to whether the scheduled meeting would culminate into some effective decision or not as by that time, the last date of submission of the application for B.Ed. may expire.

7. Thus, I dispose of the writ petition by issuing directions to the Controller of

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Examinations of the University of Kerala to ponder the task of awarding the average marks keeping in view her record and result in the other examinations and declare the result by 14 of September, 2021.....”

In the abovementioned background, I am of the opinion that the applicant has made out a prima-facie case for which Judicial intervention is emergent, keeping in mind the facts, materials available in the records and the Judgements, I am constrained to direct the WBPSA to apply the “Proportionate Quotient” and recommend the case of the applicant in Group-B Services for the WBSC (Exe.) Etc. Examination 2011, within a period of four weeks from the date of communication of the order. Mr. G. P. Banerjee, Learned Advocate appearing for the State Respondents had mentioned that all the vacancies for the said WBCS (Exe.) Etc. Examination, 2011 in Group-B Services have been filled up. In such circumstances, the Respondent No. 1, the Secretary, Department of Personnel & Administrative Reforms is directed to create a supernumerary post in consultation with Home and Hill Affairs Department to accommodate the applicant with retrospective effect giving his seniority vis-a-vis the person who has been selected in the 2011 WBCS (Exe.) Group-B Examination within three months from the date of his name being recommended by the WBPSA for Group-B services and if the applicant is otherwise eligible for the post in accordance with law.

With the above direction, the application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.