

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 389 of 2022

GOPINATH BERA & OTHERS - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

For the Applicants : Ms. M.Hazra
Advocate

09

14.06.2023

For the State Respondents : Mr.Manujendra Narayan Roy
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.

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

The prayer in this application is for a direction to the respondent authorities to allow the applicants to participate in the interview process of the recruitment for the post of Excise Constable including Lady Excise Constable. The West Bengal Police Recruitment Board had issued an advertisement for recruitment of the above post in the year 2019. Submission of Ms M Hazra, learned advocate for the applicants is that the recruitment authority had violated the principles of recruitment by declaring a “cut off” marks during the recruitment process. Submission is that such a cut off marks was not mentioned in the primary advertisement. Further, the recruitment Board has violated the principles of reservation policy, since only 5 exempted category candidates were recruited against the advertised 900 candidates under exempted category.

In response to the submissions of Ms Hazra, Mr M N Roy, learned advocate appearing on behalf of the respondents, including the Recruitment Board, submits that, as is evident from the advertisement

appearing at page 31 in 'Note', it was clearly stated that "*The qualifying marks in the Final Written Test to appear for the next stage will be fixed by the West Bengal Police Recruitment Board.*"

Therefore, the question of adding the cut off marks later does not arise. Moreover, Mr Roy, relies on a judgement – W.P.S.T. No. 173 of 2016 passed by the Hon'ble High Court, the relevant portion is as under:

"It is the prerogative of the recruitment board to decide as to what the cut off marks should be and in any event, the cut off marks cannot be dependent on the vacancies available."

As regards to the points raised by Ms Hazra regarding violation of the reservation policy, Mr Roy, refers to para 8 of the Notification No. 50-Emp. dated 01.03.2011 issued by the Labour Department which authorises the concerned respondent authority to fill up any non-exempted category candidate. The relevant portion of para 8 of the Notification is as under:

" In case of non-availability of a suitable Exempted Category Candidate belonging to SC,ST or OBC Category-A and Category-B for any of such reserved point, the said vacancy shall be filled up by a non-Exempted Category Candidate belonging to SC,ST or OBC Category-A and Category-B as the case may be."

Submission of Mr Roy is that since the advertised vacancies of the Exempted categories could not be filled up by such candidates, therefore, these vacancies were filled up by non-exempted category candidates as authorised by the above notification.

Further, Mr Roy relies on another Notification of Finance

Department dated January 21, 2019 in which appearing at 7 (i) WBPRB has been given the discretion to fix qualifying marks in the preliminary written test and final written test. Since this rule was not challenged by the applicants, the question of raising this point is not valid.

Since this matter relating to appointment involves many points of law, Ms Hazra, prays that this matter be placed for full hearing before a Bench comprising two Members (Judicial and Administrative) to which Mr Roy, does not object.

In view of the above submission, let the matter be placed before a Bench comprising two Members (Judicial and Administrative) on 20th December, 2023 under the heading 'Hearing'.

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

BLR