

**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 423 OF 2024**

**SOUMYA KANTI BISWAS - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No.	For the Applicant	:	Mr. Santanu Das,
and			Learned Advocate
Date of			
order	For the State Respondents	:	Mr. Debabrata Kole,
			Learned Advocate

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15.05.2025

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.

The prayer in this application is for a direction to the respondent authorities to review the order No.30011 dated 04.03.2024, issued by the Special Secretary (AYUSH), Health & Family Welfare Department, which cancelled the candidature of the applicant, from the post of Ayurvedic Pharmacist on the ground of low percentage of disability recorded in the medical report of the competent authority. A copy of the report dated 15.01.2024 issued by the Medical Board of Kolkata Medical College & Hospital shows the applicant became “....*unfit on account of below bench mark disability. Cannot avail PH quota....*”.

Mr. Das, learned counsel appearing on behalf of the applicant had drawn my attention to a copy of a Disability Certificate issued by the District Hospital, Howrah dated 06.09.2014 in which 55 per cent disability had been shown as permanent disability for the applicant. Mr. Das had also shown a copy of the Gazette Notification published by Ministry of Social Justice and Empowerment on 4<sup>th</sup> January, 2018 and had emphasised on the below paragraph:-

*“.....Validity of Certificate :- A Certificate issued at 18 years age will be valid lifelong....”*

Submission of Mr. Das was that as it is clear from the certificate issued by the District Hospital, Howrah on 06.09.2014 that the applicant suffers from 55 per cent permanent disability(cerebral palsy), and this certificate is valid lifelong.

On proper examination of this Notification, the Tribunal's attention was drawn to the heading of the Chapter in which contained the above relevant sentence relied by Mr.

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Das. The Chapter in bold letters clearly mentions “(iv) Intellectual Disability”, whereas as per the certificate presented by the learned counsel, the applicant was shown as physically disabled. Therefore, in the opinion of this Tribunal, the Notification presented by Mr. Das showing lifelong validity of the certificate pertaining to Intellectual Disability is therefore not relevant in this case.

Mr. Das was also of the opinion that the advertisement required an applicant to have 40 percent and above physical disability and such certificate should have been from an “Appropriate Medical Board”. His contention was that the certificate issued to the applicant by Howrah Hospital was a valid certificate.

Responding on behalf of the State respondents, Mr. Kole had submitted that the Medical Board which declared the applicant unfit is the appropriate Medical Board in terms of West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1999.

After hearing the submissions of the learned counsels and after examination of the records, the Tribunal observes the following:

The advertisement published by the West Bengal Health Recruitment Board on 14.03.2023 for the post of Ayurvedic Pharmacist stipulates that any candidate claiming as a person with disability should have 40% and above degree of disability and such percentage should have been certified by an appropriate Medical Board as per West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1999. Under para 5 of the Rules, it is stated “*Medical Board – (1) The Medical Board shall, after the examination, give a permanent disability certificate in cases of such permanent disabilities where there are no chances of variation in the degree of disability*”.

The notification No. 289 dated 29.08.2018 issued by the Health & Family Welfare Department at paragraph 3 states that “*The Superintendent/MSVP/Director of the medical institution in the sub-division/district/place of residence of the applicant, as mentioned in the proof of residence in the application, will be the competent authority for issuing the certificate of disability in regard to the nature of disability mentioned at serial nos. 1 to 8.*” The applicant falls under locomotor disability category and by this notification a Sub-Divisional Hospital or a District Hospital is the institution from which a Medical Board referred by the Superintendent or MSVP with three specialists are authorised to issue

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certificate of disability.

As recorded in earlier paragraph, the advertisement made it clear that persons with disability should have 40% and above degree of disability and such percentage should have been certified by an appropriate Medical Board as per West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1999. In terms of this advertisement requiring the medical certificate from the appropriate Medical Board and in terms of Notification No.289 dated 29.08.2018, the applicant had presented his certificate of disability issued to him by the District Hospital, Howrah. This certificate dated 06.09.2014 was signed by the Chairman and Members of the Board.

On the other hand, Mr. Kole, learned counsel has presented the certificate of disability issued by the Medical Board, Medical College and Hospital, Calcutta dated 15.01.2024 which found the degree of disability "below the bench mark". Mr. Kole had also presented a copy of OPD patient card dated 12.02.2024 which declared only 20% disability. Mr. Kole had submitted that the certificate issued by the Howrah District Hospital is not disputed, but such certificates of disability are required for the applicant to avail reservation under PH quota. In this case, as per the certificate of disability the applicant was allowed to participate under the PH category. However, after being successful and once provisionally recommended, all successful candidates are required to appear before a Medical Board for medical examination and also police clearance through PVR. This applicant was also required to appear before the Medical Board set up for medical examination in terms of memorandum 137 dated 21.01.1999. The Medical Board so constituted was required to determine the overall medical fitness and in particular the degree of disability of physically handicapped candidates. The applicant had appeared for such medical examination before the concerned Medical Board, Medical College and Hospital, Calcutta. This Medical Board found his degree of disability below the bench mark and the same Medical College and Hospital, Calcutta in its advice given to the applicant on 12.03.2024 also recorded that his degree of disability is 20% only.

Be that as it is, the Tribunal is concerned primarily with the core issue of the degree of disability. As stipulated in the advertisement, any candidate claiming to get the benefit under PWD quota, required to be medically examined by the appropriate Medical Board and, after such examination, should have been given a certificate which notes 40% and above degree of disability. But, in the case of the applicant, though provisionally

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recommended, it was found during the medical examination that his degree of disability is 20% only which is below the bench mark.

It is also noticed that neither anywhere in the application nor in the submissions of the counsel, the applicant has disputed the degree of disability as found and recorded by the Kolkata Medical Board. Therefore, such degree of disability, being below the benchmark of 40%, not being disputed or contradicted, the respondent authority's decision to cancel the candidature of the applicant was correct. Thus, the prayer in the application, devoid of any merit, is disposed of without passing any orders.

(SAYEED AHMED BABA)

OFFICIATING CHAIRPERSON

and MEMBER (A)

SCN.