

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 543 of 2020

Dr. Soumyendu Khatua. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: None.
	For the State Respondents	: Mr. S. N. Ray, Advocate.

22
08.08.2024.

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 fact of the case, in short, is that the applicant participated in an examination conducted by the West Bengal Health Recruitment Board for the post of Homoeopathy Medical Officer but the applicant's name did not feature in the final selection list. Mr. Bera, learned counsel for the applicant had submitted that the advertisement No. R/HMO/78(1)/1/2019 was modified after three months of publication by a corrigendum notice. In the modified notice, instead of fifteen marks, only five marks were fixed for other experiences. The modified notice also excluded M.O (AYUSH) under RBSK from the purview of their experiences. The applicant is an M.O (AYUSH) under RBSK and thus deprived of the additional five marks, which otherwise would have helped him in being successful in the recruitment process. Thus, he prays for a direction to the respondent authority not to discriminate the applicant for having experience as an M.O (AYUSH) under RBSK and considering his experience, allot him five additional marks, as per the original Advertisement.

Submission of Mr. S. N. Ray, learned counsel for the State respondents is that the West Bengal Health Recruitment Board and the State respondents are very much empowered to issue subsequent amendments to the original advertisement published due to various administrative reasons. As per the amended advertisement, the

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experience as an M.O (AYUSH) under RBSK was not considered as relevant for this post. Therefore, such experience was excluded from the second advertisement.

After hearing the submissions of the learned counsels and examining the records in this application, the Tribunal observes that, it is not disputed by the respondent's side that the criteria relating to marks for 'other experiences' was modified in the second advertisement. To be precise, in the first advertisement, M.O. (AYUSH) under RBSK, NHM candidates were to be given fifteen (15) marks for their 'clinical and other experiences.' In the revised advertisement, however, such experience of a M.O. (AYUSH), under RBSK, NHM has been excluded. But the dispute arises as to when such revised advertisement was published. According to Mr. Ray, such revised advertisement was published on the same day the first advertisement was published i.e. on 20.12.2019. He submits that both the advertisements were published on the same day and all the candidates were supposed to know such changes made in the second advertisement. The Tribunal has not observed any word like 'Corrigendum' or 'amendment' or 'in any partial modification' of the first advertisement, so on and so forth, mentioned in the second advertisement, though the day of publication of both the advertisements – 20.12.2019 is same. Disputing that the second advertisement was also issued on the same day i.e. 20.12.2019, Mr. Bera had drawn attention to page 19 and page 20 in this application which appears to be a typed version of the advertisement in which the word "Corrigendum Notice" is the title of the documents and it refers to a decision of WBHRB taken on 20.02.2020. However, the Tribunal has failed to see any designation of the official who is supposed to have issued this advertisement, nor any date of such publication imprinted in

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this typed version of this advertisement. The admissibility of this document is doubted. The applicant having noticed the change in the advertisement had sensed a danger that such deletion of five (05) marks may adversely affect his chance to be successful in the selection test. Thus, he filed this application before this Tribunal on 24.12.2020, before his participation in the selection process. It is also observed that, though the applicant was unhappy that no marks would be allotted to him for his clinical experience as M.O. (AYUSH), under RBSK but the fact remains that despite such knowledge, he participated in the entire selection process. It is equally important to note that the supplementary advertisement was also published much before the actual commencement of the recruitment process and all the candidates were aware of it. The Tribunal is aware of the well – settled law that such decisions, whether to reserve any extra marks for the candidates as M.O. (AYUSH) under RBSK or not, is the sole discretion of the respondents. It is the respondent authorities, not the candidates nor the Tribunal, who have such authority to take a decision. The Tribunal has also observed that such exclusion covered all M.Os (AYUSH), and not just the applicant, therefore, no malafide intention was manifest against him.

In view of the above observations and finding no merit in the prayers, this application is disposed of without any orders.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

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