

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 603 OF 2023

ANUP KUMAR DAS & ORS. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicants : Mr. Saurav Bhattacharjee,
and Learned Advocate
Date of For the State Respondents : Mr. Gautam Pathak Banerjee,
order Learned Advocate

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19.02.2025

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 23rd 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 issue them appointment letters under physically challenged (hearing impaired) category for the post of LDC in the Clerkship Examination 2019.

From the submissions and the records, it appears that the applicants though having been recommended were subsequently not appointed to the post of L.D.C. under physically challenged (hearing impaired) category for the post of LDC in the Clerkship Examination 2019. The applicants had participated and were successful for the post of LDC in the Clerkship Examination 2019, conducted by the West Bengal Public Service Commission. The applicants had claimed to be 40% disability (hearing impaired) on the basis of certificates given by the District Social Welfare Officers of different districts to them. As was required and mentioned in the advertisement, such successful candidates, claiming to be entitled under PWD quota, were required to get their medical tests done through the Central Medical Board constituted at Government Medical College Hospitals in Kolkata, District Hospitals and Sub-Divisional Hospitals. Accordingly, the applicants were referred to these Central Medical Boards.

In the reply, filed by the State respondents, copies of some of the applicants' Medical Fitness Report certified by the Central Medical Board have been annexed. In the case of the applicant No.10, Debika Karmakar, the Central Medical Board recorded only 30% hearing impairment and thus not entitled to take the benefit under PWD category. Similarly, a certificate issued by the same Medical Board records 0% as hearing impairment in the case of applicant No.2, Keshab Samanta. In view of their percentage below 40%, the candidatures of the applicants were subsequently cancelled. The contention of the applicants were that the Calcutta Medical College, which conducted the medical examination through its Central

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Medical Board, had followed the BERA test in terms of PWD Act, 2016 and 2018, but the advertisement was based on PWD Act, 1999. Further contention is that the cited Rule in the advertisement, West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1999 does not mention anything about physically handicapped (hearing impairment). Be that as it is, the Tribunal is concerned primarily with the core issue of the degree of their disability. As stipulated in the advertisement, any candidate claiming to get the benefit under PWD quota were required to be medically examined by the Central Medical Board and, after such examination, should have been given a certificate which certifies 40% and above degree of disability. But, in the case of the applicants, although provisionally recommended by the Commission, it was found during the medical examination that their hearing impairment is not only below 40%, but in the case of applicant No.2, Keshab Samanta, it was zero per cent.

It is also noticed that neither anywhere in the application nor in the submissions of the counsel, the applicants have disputed the degree of disability as found and recorded by the Central 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 their candidature was correct and, therefore, 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.