

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 90 OF 2025

BISHAKHA DOLUI & ORS. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Mr. Saurav Bhattacharjee, Learned Advocate
	For the State Respondents	:	Mr. Manujendra Narayan Roy, Learned Advocate

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07.08.2025

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 applicants, in this original application, have prayed for a direction to the respondent authorities to recommend their names to the post of Constable and / or Lady Constable in Kolkata Police against the 86 vacancies arose due to non-joining of the recommended candidates.

The West Bengal Police Recruitment Board had published an advertisement in their website on 27.05.2022 inviting applications for recruitment to the post of Constable / Lady Constable in Kolkata Police – 2022. The total numbers of vacancies were 1410 for Constable and 256 for Lady Constable as mentioned in the said advertisement. Mr. Bhattacharjee, learned counsel for the applicants had submitted that the revised vacancies were disclosed as 1410 for Constable and 856 for Lady Constable. The applicants had participated in the selection process without any protest. The final merit list of provisionally selected candidates was published on 09.02.2024 vide memo No.643, wherein 1409 male candidates and 856 female candidates were recommended by the Board for appointment to the post of Constable and Lady Constable respectively in Kolkata Police 2022. The names of the applicants did not appear in the list. Their names took place in a list of not selected candidates for the post of Constable and Lady Constable. It is submitted that one Rofiuddin Sk. made an RTI Application. In reply, they could know that there were many vacancies due to non-joining of recommended candidates in different social categories. They scored less than the marks secured by the last recommended candidate of the category they belonged to. Submission is when there

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are 86 vacancies, still available due to non-joining of recommended candidates, their names can be recommended by the recruiting authority against those 86 vacancies. The applicants participated in all stages of recruitment process and their marks were very close but less than the last recommended candidate. As such they were unsuccessful candidates. However, in case the cut-off mark is lowered down because of non-joining of the vacancies, they may have a chance to get appointed for the said post. The applicants have submitted their respective representations to the respondent authority, but they have not taken any steps till date for recommending their names, which is illegal arbitrary and due to inaction on the part of the respondent authorities. So, by way of filing this application, they approached the Tribunal.

Mr. Bhattacharjee, learned counsel had cited memo No.7196-F(P) dated 02.07.2010 and a decision of the Hon'ble Supreme Court of India in (1999) 3 SCC 696 : "*Virender S. Hooda & Others versus State of Haryana & Anr*".

Mr. Gautam Pathak Banerjee, learned counsel for the State Respondents submits that as evident from the records none of the applicants had scored higher than the cut-off marks set for the post of Constable / Lady Constable. Since they were not successful candidates, they were not recommended by the Board for appointment to the post of Constable / Lady Constable.

Mr. Banerjee also informs that similarly circumstanced candidates, dissatisfied with the proceedings of the Tribunal, had approached the Hon'ble High Court, which, after hearing the matter, dismissed their petition with the following observations :-

"....Indisputably, the petitioners have not been provisionally selected. From the contents of the recruitment notification, it also does not appear that the resultant vacancies that may occur, cannot be carried forward to the next recruitment process. The petitioners did not challenge the said notification and willingly participated in the recruitment process. Being unsuccessful, no indefeasible legal right has accrued in their favour..."

Mr. Banerjee also submits that the application is not maintainable for the simple reason that it was filed by the unsuccessful candidates, who willingly participated in the selection process but turned around to approach the Tribunal when they were not

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successful.

From the submissions of the learned counsels representing both the sides, it has become crystal clear that the applicants were not successful in the recruitment process for the post of Constable / Lady Constables in Kolkata Police conducted by the West Bengal Police Recruitment Board in 2022. Such fact has neither been disputed nor made the core prayer in these applications. From the few instances cited above, it is not in dispute that all the applicants scored below the cut-off marks in the social categories they belong to. However, the main thrust of the applications of the applicants is that, since the number of seats are lying vacant, therefore, these applicants be accommodated in these vacancies. It is not convincing to the Tribunal that how unsuccessful candidates can claim for filling up the vacant posts with their candidature. The plain and simple fact is that they participated in the entire selection process, but were unsuccessful. The question of filling up these vacancies with unsuccessful candidates in the same recruitment process does not arise at all. Similarly circumstanced candidates had earlier prayed before the Hon'ble Calcutta High Court, which had heard and dismissed the petition with the following observations:

"....Indisputably, the petitioners have not been provisionally selected. From the contents of the recruitment notification, it also does not appear that the resultant vacancies that may occur, cannot be carried forward to the next recruitment process. The petitioners did not challenge the said notification and willingly participated in the recruitment process. Being unsuccessful, no indefeasible legal right has accrued in their favour..."

It is also clear from the above cited paragraph that the applicants had not challenged the recruitment notification and willingly participated in the recruitment process. The Hon'ble Court's observation is that being unsuccessful in the recruitment process, "*no indefeasible legal right has accrued in their favour*". Be that as it is, the Tribunal has properly examined the matter in the light of facts in this case and has come to this conclusion that the authorities have published the merit list. Now, the applicants, being unsuccessful in the recruitment process, cannot turn around and question the very legality of the recruitment process and claim their candidature in filling up the vacant posts. The Tribunal is also satisfied that the Recruitment Board did not commit any error in deciding

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that these vacancies would be carried forward to the next year's selection process.

In a similar case, the Hon'ble Supreme Court of India in Civil Appeal No. 2473 of 2022 recorded the following observations:

“.....we are of the view that the appellant cannot claim appointment on unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgement and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree.”

In view of the above observations, the prayers of the applicants for a direction to give them appointments against the vacancies which arose due to non-joining of the recommended candidates, have no merit and thus, disposed of without passing any orders.

SCN.

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