

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. –OA-840 of 2023

Md. Hafizur Rahaman. -- **VERSUS** – The State of West Bengal & Others.

Serial No. and Date of order 09 07.08.2025	For the Applicant For the State Respondents	: Mr. G. P. Banerjee, Learned counsel. : Mrs. S. Agarwal, Learned counsel.
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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 primary prayer in this application is for setting aside the impugned order passed by the Secretary and Controller of Examinations, West Bengal Health Recruitment Board on 23.11.2023. The said respondent had passed this reasoned order in terms of a direction of this Tribunal in OA-564 of 2023 dated 25.08.2023. By this order, the respondent was directed to consider the representation of the applicant and take suitable action as per norms in correcting the error in total marks and recommend the name of the candidate, if otherwise eligible.

In the earlier round of litigation, the applicant had ventilated his grievance that due to error on part of WBHRB, he was awarded only 75.5 marks whereas it should have been 80.05 marks. Such calculation was based on the reply given by S.P.I.O. The Tribunal had directed the respondent authorities to consider the representation of the applicant mentioning such calculation errors and recommend the name of the candidate, if the applicant is found eligible. In terms of such direction, the respondent authority passed the reasoned order which did not accept the contention of the applicant that there was any error in the calculations and the applicant's marks of 75.5 stands as the correct marks.

After close examination of this reasoned order, it is understood that no separate marks for experience was allotted to the applicant on the ground that the academic score is inclusive of the experience. The applicant was awarded 69.5 inclusive of the experience. The reasoned order also cited a resolution No. 163 of the Board Meeting dated 31.08.2021, by which the marks obtained by the candidate in his graded BHMS were considered. So, from the grounds given in the

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reasoned order, the total marks obtained by the applicant under the following categories is as:

- (i) Academic score including the experience --- 69.5 marks
- (ii) Interview --- 6 marks.
- Total --- 75.5 marks.

Having obtained only 75.5 marks, the candidate was not found eligible to be recommended for the post of Homeopathic Medical Officer.

Mrs. Agarwal, learned counsel appearing on behalf of the State respondent has also submitted on similar lines as given in the reasoned order.

However, Mr. Banerjee, learned counsel argues that the resolution No. 163 relied on by the respondent authority came into force on 31.08.2021, much later than the date of the advertisement. Therefore, such resolution cannot be the ground for deciding a matter relating to the recruitment process whose advertisement was published on 20.12.2019. Mr. Banerjee also argues that the applicant's interview was also held on 29.12.2020, much before the resolution was passed. He relies on a Supreme Court judgement (2008) 3 SCC 512.

Tribunal is also not convinced with the argument of the respondent authority that the academic score includes the experience part. In the reasoned order as narrated above, the applicant was shown as having obtained 69.5 which included the academic score as well the experience. Such unconvincing reason is not in tune with the advertisement itself, which shows maximum marks of 75 against qualification for having a qualification of the Bachelor of Homoeopathic Medicine and Surgery (B.H.M.S.). This is followed by column 3, which is titled as, "other experiences in Homoeopathy from any Government Institution or Government valid organisation." Under this category, a total of maximum 5 marks has been kept, with one mark for each completed year. The RTI reply given to the applicant also shows the applicant having received 5 marks for his experience. Therefore, the contention of the Board that the academic score includes experience does not appear to be a valid argument.

Advertisement being no. R/HMO/78(1)/1/2019 dated 20.12.2019 : initiated the selection process for recruiting Homoeopath doctors. The advertisement

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declared that the essential qualification for candidature as :

- (a) A Bachelor Degree in Homoeopathy from a recognised university or institute as included in the second schedule of the Homoeopathy Central Council Act, 1973;
- (b) The candidate must be able to speak, read and write in Bengali;
- (c) Candidates must be registered either in Part A of the State Register of Homoeopathic Medical practitioners maintained by the Council of Homoeopathic Medicine, West Bengal or Part I of the Central Register maintained by the Central Council of Homoeopathy.
- (d) Reservation in the posts and service shall be admissible for candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes (category-‘A’ and category-‘B’) as per extant rules of the Government of West Bengal or other category as the State Government may by order specified.

The applicant was one of the candidates who fulfilled all the criteria sought in the advertisement. The applicant appeared for interview on 29.12.2020 after being found eligible in terms of aggregate marks obtained in 1st B.H.M.S. to 4th B.H.M.S., house staffship and other experience.

The West Bengal Health Recruitment Board took a Resolution in its 163rd Board Meeting held on 31.08.2021 wherein it was decided *inter alia*, “.....if any candidate has completed B.H.M.S. after completion of diploma / D.H.M.S., marks obtained by such candidates in both the Diploma and graded B.H.M.S. to be considered for evaluation of marks obtained in the equivalent B.H.M.S.

If any candidate appears to have not submitted D.H.M.S. marks sheets, his/her candidature to be cancelled.”

Consequent to the resolution no. 163, the candidature of the applicant was cancelled.

The advertisement mentions only Bachelor’s degree and there is no mention of Diploma or D.H.M.S. within the four corners of the advertisement. Thus, the applicant cannot be held guilty of any non-disclosure that he had first completed diploma and then Bachelor’s degree.

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The West Bengal Health Recruitment Board (W.B.H.R.B.) took the Resolution in its 163rd Board Meeting held on 31.08.2021 which was after the advertisement dated 20.12.2019. The selection process had commenced with the publication of the advertisement and the Board is stopped from taking any resolution detrimental to the interest of any candidate after the selection process had been initiated. The act of the W.B.H.R.B. is contrary to the principles of Article 14 of the Constitution.

In (2008)3 Supreme Court Cases 512, the Hon'ble Court was pleased to hold that the Rules of game cannot be changed afterwards.

The RTI reply reveals that the applicant had secured qualifying marks and was entitled to be placed in the merit panel prepared on 31.12.2021. The observation of the Senior Law Officer, W.B.H.R.B. that there was no addition / alteration in the main advertisement is not correct. The reasoned order dated 23.11.2023 is contrary to the principle of natural justice and is liable to be set aside with specific direction to issue appointment in favour of the applicant.

Therefore, the reasoned order dated 23.11.2023 is quashed and set aside with a direction to the respondent no. 4, the Secretary and Controller of Examinations, West Bengal Health Recruitment Board to recommend the name of the applicant for the post of Homoeopathic Medical Officer if found otherwise eligible within 3 (three) months from the date of communication of this order.

The application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.