

29.07.2025
Sl. No.134
AMR
Ct.No.4

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WP.ST 130 of 2025

**Debika Karmakar
Vs.
The State of West Bengal & Ors.**

**Mr. Biswarup Biswas
Ms. Nupur Chaudhuri**

...for the Petitioner

**Mr. Biswabrata Basu Mallick, Ld. AGP
Mr. K. M. Hossain**

...for the State

1. The present writ petitioner participated in a process of selection for the post of Lower Division Clerk. Her candidature was under the Persons with Disabilities (PWD) category. In support of her claim as a PWD candidate, the petitioner relied upon a certificate of disability dated 08.01.2019 issued under Rule 18(1) of Rights of Persons with Disabilities Rules, 2018. The certificate certified her disability to be 59 per cent based on a finding of her suffering with hearing impairment.

2. Having participated in the recruitment process, the applicant/writ petitioner emerged successful.
3. Prior to issuance of an appointment order, the petitioner was required to undergo a medical examination generally conducted prior to issuance of an appointment letter, to assess the general fitness of a candidate at the threshold of a government employment. In this medical examination dated 20.01.2023, conducted for this purpose, the Examining Authority (Board) has found the petitioner/applicant unfit for appointment, based on a finding that she suffers with 30 per cent hearing impairment. On such ground, the petitioner was not offered the appointment.
4. The petitioner approached the West Bengal State Administrative Tribunal (SAT) by filing an Original Application. In O.A. No. 603 of 2023 filed by the writ petitioner, she has sought a direction upon the respondents to issue appointment letter in her favour on the basis of her successful participation in the recruitment process.
5. Further prayer was made that authorities may be directed to issue the appointment letter without taking into consideration the opinion in the general Medical Examination on 20.01.2023.
6. It is submitted on behalf of the writ petitioner/applicant that in terms of the advertisement

based on which the recruitment process was set in motion, a Medical Board constituted at a Government Medical College and Hospital in Kolkata, District Hospital; and Sub-divisional Hospitals were declared to be competent for issuing a certificate in respect of a candidate under PWD category. The certificate dated 08.01.2019 relied upon by the petitioner in the recruitment process is accordingly issued by a competent board in terms of the advertisement, as the same was issued by a Board at the Midnapore Medical College and Hospital. It is submitted that authenticity of the said certificate has never been doubted by any authority. The certificate continues to be valid under the provisions of the Rights of Persons with Disabilities Act and the Rules framed thereunder.

7. The Certificate dated 08.01.2019, is issued pursuant to an assessment of the petitioner's hearing impairment by a competent Board including an Audiologist (specialist). The Certificate dated 08.01.2019 has a statutory sanctity. Authenticity of the same not being in doubt, there was no occasion for the authorities to rely upon a general medical examination dated 20.01.2023, of the applicant/petitioner, normally done prior to issuance of an appointment letter in the matter of public employment.

8. The authorities are bound to acknowledge the certificate; and without raising any objection based on a medical examination dated 20.01.2023, they ought to issue the appointment letter in favour of the petitioner.

9. Learned AGP, on the other hand, submits that prior to issuance of an appointment letter, there is a requirement of conducting a medical examination of the candidates being selected so as to assess their fitness for a public employment. It is, under such circumstances that the petitioner was subjected to an examination by a Board on 20.01.2023, wherein she was found to be suffering with hearing impairment to the extent of 30 per cent. The finding of the Board on 20.01.2023, is at variance with the certificate of disabilities dated 08.01.2019, relied upon by the petitioner. Thus, relying on such medical examination dated 20.01.2023, the authorities have not issued the appointment letter in favour of the petitioner. In so far as the issue raised regarding the participation of an Audiologist in the Board which issued the petitioner's Certificate of Disability dated 08.01.2019, the learned AGP submits that the report of the medical examination conducted on 20.01.2023 is also signed by an Assistant Professor of ENT of the Medical College Hospital, Kolkata.

10. We have considered the rival submission on behalf of the parties. The learned counsel for the petitioner has also relied upon two judgments.

11. One of the judgments relied upon is by a Coordinate Bench, in the case of ***Swastika Mandal –vs.- State of West Bengal & Ors.*** passed in ***MAT 1884 of 2011***, wherein it was held that in the absence of any doubt as regards genuineness of a disability certificate, there is no scope to ignore the same for the purposes of an appointment.

12. Another judgment relied upon is by a Single Bench of this Court in the case of ***Tanmay Mandal – vs.- The West Bengal Central School Service Commission & Ors.*** Relying on this judgment, he submits that the statutory authority cannot disregard the disability certificate dated 08.01.2019 on whims.

13. Based on the submissions advanced on behalf of the parties, noted above, that there is no dispute or doubt as regards the validity or authenticity of the Certificate of Disability issued in favour of the applicant/petitioner on 08.01.2019. This Certificate clearly records the level of disability to the extent of 59 per cent of hearing impairment.

14. The certificate is issued by a Board comprising of three doctors including an Audiologist, who is a healthcare professional who specializes in identifying,

assessing and managing disorders of the auditory and vestibular (balance) system. No doubt has been raised by anyone as regards the genuineness of the certificate or the finding therein.

15. The petitioner's certificate of disability is a certificate issued under Rule 18 (1) of the Rights of Persons with Disabilities Rules, 2018 (hereinafter in short 2018 Rules), which reads as under:

“18. Issue of certificate of disability. –(1) on receipt of an application under Rule 17, the medical authority or any other notified competent authority shall, verify the information as provided by the applicant and shall assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying himself that the applicant is a person with disability, issue certificate of disability in his favour in Form V, VI and VII, as the case may be.”

16. The petitioner's Certificate dated 08.012019, is issued under Rules 18 (1) of the 2018 Rules meaning thereby that the same has been issued in compliance with the provisions contained in Chapter (X) of the Rights of Persons with Disabilities Act, 2016 (hereinafter in short 2016 Act). Chapter X of the Act contains the provisions requiring notification of guidelines for assessing the extent of disability. Section 57 of the 2016 Act provides for designation of persons having requisite

qualification and experience as certifying authority competent to issue the certificate of disability. Section 58 of the 2016 Act provides the procedure for such certification, and Section 58(3) mandates that the certificate issued under Section 58 shall be valid across the country. It is nobody's case that the petitioner's Disability Certificate dated 08.01.2019, is not issued as per the 2016 Act and the 2018 Rules. Therefore, it cannot be denied that the Certificate dated 08.01.2019, is valid across the country. From bare perusal of the Disability Certificate dated 08.01.2019, bearing Certificate No. 45, it is apparent that the same certifies the petitioner's hearing impairment at 59 per cent. It is manifest that the Certificate has been issued on a Form (VI) specified in the 2018 Rules. Such Certificate issued under Rule 18 of the 2018 Rules has a statutory validity under Rule 19 of the 2018 Rules, which reads as under:

19.Certificate issued under Rule 18 to be generally valid for all purposes.- a person to whom the certificate issued under Rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disabilities under schemes of the Government and of non-governmental organizations funded by the Government."

17. Plain reading of Rules 19 reveals that the petitioner is entitled to apply for facilities, concessions and benefits admissible to a person with disability under

the scheme of the Government, which in the present case is the benefit of reservation in the matter of public employment. Thus it is obvious that the statutory Rule lends sanctity to the Certificate dated 08.01.2019, in so far as the petitioner's hearing impairment, and its extent are concerned. The Certificate continues to be valid for the period specified in the Certificate as Rule 20 of the 2018 Rules, which reads as under:

“ 20. Validity of certificate of disability issued under the repealed Act.- the Certificate of disability issued under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) shall continue to be valid after commencement of the Act for the period specified therein.

Thus there is no scope to deprive the petitioner, benefits of the Certificate of Disability dated 08.01.2019, issued under Rule 18 of the 2018 Rules.

18. In the instant case the Certificate dated 08.01.2019 clearly records that the petitioner's 59 per cent hearing impairment “not likely to improve”, still the certificate recommends reassessment of the disability after ten years, i.e. in the year 2029. The petitioner's Certificate of Disability, therefore, continues to be valid in terms of statutory Rules. During currency of its validity and relying thereupon the petitioner participated in the

recruitment process. The authorities therefor, have no discretion or scope to ignore or overlook the Certificate of Disability dated 08.01.2019.

19. We are, therefore, of the opinion that the assessment done by a General Medical Board and Certificate dated 20.01.2023, issued by the General Medical Board cannot be allowed to prevail over the Certificate of Disability issued under Rule 18 (1) of the 2018 Rules. The Certificate dated 20.01.2023, does not have any statutory recognition or sanctity, in so far as disability or the degree of disability is concerned. Thus, Certificate dated 20.01.2023, cannot take away the rights accrued in favour of the petitioner by virtue of the Certificate of Disability dated 08.01.2019, issued under Rule 18 of the 2018 Rules.

20. The medical examination conducted on 20.01.2023 is a general examination conducted by the authorities to assess the level of fitness of a person. The recording of a 30 per cent hearing impairment in this medical examination which is done without a specialist (audiologist) is of no consequence to the certificate of disability dated 08.01.2019, issued by a board comprising of a specialist under the Rule 18(1) of the 2018 Rules.

21. In so far as the submission of the learned AGP that medical examination report dated 20.01.2023 was

signed by an Assistant Professor of ENT, we find such submission to be devoid of any substance. The Certificate dated 08.01.2019 was issued by a Board comprising of an Audiologist (Specialist) whereas the Medical Board conducting the medical examination on 20.01.2023, was not based on an examination or assessment of the petitioner's disability by any specialist. Therefore, mere signing of the report dated 20.01.2023, by an Assistant Professor of ENT as claimed by the learned AGP, cannot be a basis for the authorities to overlook the Certificate of Disability dated 08.01.2019, issued as per statutory requirement. As regards the percentage of hearing impairment recorded in the report dated 20.01.2023, we have no hesitation in holding that such assessment cannot be relied upon, or given precedence over the certificate of disability issued under Rule 18 of the 2018 Rules.

22. The object and purpose of the medical examination dated 20.01.2023 was for a totally different purpose. The Certificate dated 08.01.2019, on the other hand, has a statutory sanctity, is based on an examination by a specialist, and therefore, the same must prevail.

23. A last submission advanced by the learned AGP is that this Court should direct the petitioner to appear before a specialist at a higher centre for reassessment

of the percentage of hearing impairment (disability). In support of such submission he relies upon a decision of the apex Court in the case of ***The State of West Bengal and Ors v. Subhadip Roy (Civil Appeal No. 10063 of 2024 arising out of SLP (C) No. 7343 of 2024)***, we find the reliance placed by the learned AGP on the decision of the Apex Court in the case of ***Subhadip Roy (supra)*** to be unsustainable. Upon going through the judgment we find that in the case of ***Subhadip Roy*** the authorities doubted the genuineness of the disability certificate and had referred the respondent to Central Medical Board, Kolkata, for re-evaluation of hearing disability. The exercise resulted in reassessment by a subsequent board, which was at variance with the earlier disability certificate. The High Court, however, vindicated the claim of the writ petitioner therein relying upon earlier disability certificate issued in 2017, ignoring the reassessment done on 27.12.1999.

24. The apex Court noticing the dispute, in the above factual background directed the respondent therein to appear before the All India Institute of Medical Sciences, New Delhi, for determination of the nature and extent of hearing disability by a Medical Board. In the present case, as noted above, there is no reassessment by a subsequent Board in compliance

with the 2016 Act, or the 2018 Rules, and none has doubted the genuineness of the Disability Certificate issued under Rule 18(1) of the 2018 Rules. There being no doubt raised regarding genuineness or authenticity of the Disability Certificate dated 08.01. 2019 and having regard to Rules 19 and 20 of the 2018 Rules noted above, which lends statutory authenticity to the Certificate dated 08.01.2019, we are of the considered opinion that present case is factually distinguishable for the judgment and order in the case of **Subhadip Roy (supra)**, based on a different set of circumstances. The said judgment, therefore, would have no application to the facts and circumstances of the present case.

25. The petitioner cannot be denied benefit of such certificate and denial by the authority to issue an appointment letter based on the certificate dated 08.01.2019, is unsustainable for the reasons above.

26. We, therefore, direct that the authorities should proceed to offer the appointment letter to the petitioner without raising any objection as regards the Certificate of Disability dated 08.01.2019. The order of the Tribunal dated 19.02.2025 passed in O.A. No. 603 of 2023, in our opinion, and in view of the above conclusion, is unsustainable.

27. The order is set aside. The present writ petition is allowed in the above terms. The O.A. No. 603 of 2023, also stands accordingly allowed.

28. It is directed that the authorities will proceed in compliance with this order expeditiously and process the petitioner's claim after assessment and verification of other relevant parameters contemplated in the recruitment process, if any; positively within eight weeks from the date of receipt or production of a copy of this order.

29. Urgent Photostat certificate copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)