

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 2408/2025
CAV No. 1640/2025

**J & K Public Service Commission
Through its Secretary,
Resham Garh Colony, Jammu,
Presently Sh. Bashir Ahmed Dar,
Age 58 years,**

.....Applicant(s)/Petitioner(s)

Through :- Mr. Farooq Ahmad Natnoo, Advocate

v/s

**1. Vasudha Katoch, D/o Sh. Partap
Bhushan Katoch, R/o Village Hambal,
Tehsil & District Doda**

.....Respondent(s)

**2. UT of J & K
Through Commissioner/Secretary to Govt.
Health and Medical Education Department,
J & K Government,
Civil Secretariat, Srinagar/Jammu-180001
3. Director Indian Syustem of Medicine,
J & K Government, Jammu**

.....Proforma-Respondents

Through :- Mr. Achal Sharma, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER (ORAL)
02.09.2025**

Sanjeev Kumar J

CAV No. 1640/2025

1. Heard learned counsel for the caveator.
2. Caveat stands discharged.

WP (C) No. 2408/2025

1. Impugned in this petition, filed under Article 226 of the Constitution of India by J & K Public Service Commission, is an order and judgment dated 14.07.2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu (“**the Tribunal**”) in TA No. 6550/2021 titled “Vasudha Katoch vs. State of J & K and Ors.”, whereby the Tribunal has, while allowing the OA filed by respondent no. 1, directed the petitioner-Public Service Commission to issue a supplementary recommendation in favour of the respondent no. 1 by treating her marks as 45% instead of 44.88% by giving her the benefit of rounding off.
2. Impugned judgment is assailed by the petitioner primarily on the ground that the Tribunal has failed to appreciate the settled legal position enunciated by this Court in “**J & K Public Service Commission vs. Shaawaz Umer Khan and Ors. (2017) 2 JKJ 292**” and also that the Tribunal has issued a mandamus to enforce negative equality by perpetuating the illegality committed by the petitioner in some other case.
3. Having heard learned counsel for the parties and perused the material on record, the only question that requires determination in this case is, “Whether the Tribunal was right in ordering rounding off of marks of respondent no. 1 from 44.88 to 45?”
4. Indisputably, the respondent no. 1 has been awarded 44.88 points in the selection process conducted by the petitioner for direct recruitment of Medical Officers (Ayurvedic). The procedure for

selection to be followed by the petitioner in making such selections is governed by J & K Public Service Commission (Business & Procedure) Rules, 2021 [**“the Rules of 2021”**]. The Rule 50 of the Rules of 2021 prescribes a benchmark which a candidate to be selected and appointed must achieve. The relevant extract of Rule 50 is set out below

“Rule 50: For determination of the suitability of candidates for appointment under Rule 42, the candidates from Open Merit Category shall be required to score a minimum of 50% and those belonging to Reserved Categories and Physically Challenged Persons shall have to obtain a minimum of 45% out of the total weightage points earmarked for assessment under Rule 42.

.....”

5. There is no dispute with regard to the fact that the benchmark provided for reserved categories under Rule 50 is minimum of 45% of the total weightage points earmarked for assessment under Rule 42. Rule 42 provides hundred points as total weightage for assessment. The respondent has, therefore, obtained only 44.88% which is slightly less than the minimum benchmark prescribed under Rule 50. The entire case of the respondent herein before the Tribunal was that the respondent was entitled to the benefit of rounding off and her score deserved to be raised to the minimum benchmark of 45%.
6. Apart from other pleas, the plea that was vehemently urged by the respondent before the Tribunal was that under similar set of circumstances, score of one Dr. Mohd. Javed, who was selected

for the post of Medical Officer in the year 2019, was rounded off to 45% from 44.88%. This generated a legitimate expectation in the respondent of consistent treatment.

7. The OA of the respondent was contested by the petitioners by filing their objections in which a clear stand was taken that in the absence of any rule providing for rounding off, the benchmark of 45% in the case of RBA was required to be strictly adhered to and that a wrong precedent of past cannot be cited to perpetuate an illegality for all times to come.
8. Having considered the rival contentions and the case law on the subject, the Tribunal ruled in favour of the respondent and allowed the OA in terms of the judgment impugned.
9. We have given our thoughtful consideration to the rival contentions and are persuaded to accept the argument of Mr. F.A. Natnoo, learned counsel for the Public Service Commission that the Rules of 2021 do not make any provision for rounding off and thereby to dilute the benchmark prescribed under Rule 50. The benchmark provided under Rule 50 reproduced above is the minimum and, therefore, there cannot be anything below the minimum. To qualify to be appointed to the gazetted service through the process of selection undertaken by the PSC, a candidate must obtain minimum of 45% of the total weightage points earmarked for assessment under Rule 42. The reliance placed by the learned counsel for the respondents on Rules 51 and 52 of the Rules of 2021 is totally misplaced.

10. Rule 21 deals with fixation of general/relaxed standards by the PSC on the request of Controller of Examination in respect of competitive examinations and these general/relaxed standards could be fixed before the declaration of the result so as to shortlist the qualified candidates to participate in viva-voce. It does not deal with the benchmark for appointment to Government service. Similarly, Rule 42 speaks about the grace marks and is thus not the provision to dilute the benchmark fixed by Rule 50.
11. The question which we have formulated for answer is no longer *res integra*. Way back in the year 2011, the Hon'ble Supreme Court of India was confronted with identical Rule in the case of **“Orissa Public Service Commission and Anr. Vs. Rupashree Chowdhary and Anr. (2011) 8 SCC 108”** in which the Hon'ble Supreme Court in para 9 to 11 of the judgment held thus: -
- a. **The appointment to the post of Civil Judge (J.D.) under the Orissa Judicial Services is guided by Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and Rule 24 thereof specifically deal with the criteria for determining of candidates for interview. Rule 24 reads thus: -**

24. Determination of number of candidates for interview:

The Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty three per centum of marks in each paper in the main written examination.
 - b. **A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33& marks in each of the papers and not less than**

45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.

- c. We may also draw support in this connection from a decision of this Court in District Collector Chairman, “Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi reported in (1990) 3 SCC 655”. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

12. Relying upon the aforesaid judgment of the Hon’ble Supreme Court, a Division Bench of this Court in case of “J & K Public Service Commission and Ors. vs. Shawaaz Umer Khan (supra)”

has taken the same view while interpreting the identical Rule of J & K Public Service Commission.

13. In view of the settled legal position, the rounding off of minimum marks fixed as a benchmark for selection or appointment is permissible only if the rule permits so and not otherwise. As we have held above, once a benchmark of minimum points/marks has been fixed, there could not be further dilution and lowering the benchmark even by a single point or even by a fraction thereof. This being the trite law, we need not debate on the case law which has been discussed by the Tribunal in the judgment impugned.
14. So far as the example of Dr. Mohd. Javed, which has been cited by the Tribunal in the judgment impugned is concerned, suffice it to say that no such plea was raised by the respondent in the OA filed before the Tribunal nor the J & K Public Service Commission had an opportunity to explain its position. Otherwise also, it is a settled legal proposition that the equality cannot be enforced in a negative manner and that a Constitutional Court would not issue a writ of mandamus to command the State or its instrumentalities to perpetuate a mistake it has committed earlier. In **“Basawaraj and Anr. Vs. Spl. LAO (2013) 14 SCC 81”**, the Hon’ble Supreme Court in para ‘8’ held thus: -

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right

on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner.
.....
.....
.....”

15. We are not sure whether the case of Dr. Mohd. Javed was identical and under what circumstances, the benefit of rounding off was given to him, but we must say that had that been brought to our notice and a specific challenge laid to his rounding off, we would have definitely intervened in the matter. Be that as it may, the J & K Public Service Commission needs to introspect and find out as to what had transpired when the benefit of round off to Dr. Mohd. Javed was granted and if the same was found to have been illegitimately done, necessary action against the persons who are responsible is required to be taken.
16. For all the reasons indicated above, we find merit in this petition and the same is, accordingly, allowed. The impugned judgment passed by the Tribunal dated 14.07.2025 is set aside.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
02.09.2025
Manik

Whether this order is speaking: yes
Whether this order is reportable: yes