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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1651/2017

DR. S. SELVA VINAYGAGAM

..... Petitioner

Through Mr. Rakesh Kumar, Mr. M.S. M. Asai
Thambi and Mr. Santosh Kumar,
Advs.

versus

NATIONAL BOARD OF EXAMINATIONS

..... Respondent

Through Dr. Rakesh Gosain, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **12.07.2017**

By way of this petition, the petitioner is seeking rounding off her marks. The petitioner had admittedly obtained 149.75 marks in the National Board Examination which result was declared on 07.02.2017; pass marks being 150 out of a maximum of 300 to be declared as pass. The petitioner by way of this petition is seeking rounding off of her marks; prayer being that the same be read as 150.

Record shows that the petitioner is a qualified MBBS and registered medical practitioner (Doctor) registered with the Tamil Nadu Medical Council since 2010. She had applied in the year 2011 in all India Test for selecting trainees for Diplomate of National Board conducted by the National Board of Examinations. This is a specialized course. The petitioner had successfully completed her theory examination and qualified for practical a examination. As per

the rules of the respondent, a person who qualifies in the DNB theory examination had to pass the DNB practical in three attempts; if he failed to pass the practical in three attempts, he had to re-take the whole examination process afresh. After qualifying the theory examination, the petitioner appeared in the practical examination and has secured 149.75 marks out of 300. She fell short of .25 marks of out 150 to qualify for DNB Paediatrics. This petition has accordingly been filed.

Learned counsel for the petitioner in support of his submission that rounding off is permissible has placed reliance on various judgments.

Reply has been filed by the respondent. His submission is that a rounding off in some circumstances may be permissible but not so in the instant case. Submission is that the criteria provided by the respondent which is clear from the Information Bulletin of June, 2016 clearly states that a candidate must obtain minimum 50% in the Clinical Examination (including viva) to qualify for the practical examination. There is no grace marks permitted in the practical examination. Submission being that admittedly the petitioner has qualified in the theory examination but since she has not qualified for the practical examination as she was falling short of .25 marks she should not be granted the benefit. Learned counsel for the respondent has placed reliance 2012 SCC OnLine Del-2751 Dr. Shantanu Kadam Vs. National Board of Examinations and Others; 2014 SCC OnLine Del 2770 Dr. Golakiya Aayush Parshottambhai Vs. The Director, National Board of Examination as also another judgment of the Apex

Court reported as (2015) 13 SCC 668.

Per contra, learned counsel for the petitioner has also placed reliance on various judgments as noted hereinunder.

A Bench of this Court in W.P.(C) No.2775/2013 Savita Vs. Central Board of Secondary Education & Anr had an occasion to consider such a criteria; in that case the petitioner in the Central Teacher Eligibility Test (CTET) had secured 59.33%. Percentage required for qualification was 60%. The same had been permitted.

This Court notes that the rounding off which the petitioner seeks is rounding off of from 149.75 marks to 150 i.e. enlarging the score by 1/4th of one mark. This Court also notes that the issue of rounding off of marks has been the subject matter of various decisions.

In the case of (2005) 2 SCC 10 State of Uttar Pradesh Vs. Pawan Kumar Tiwari where the percentage had been rounded off from 46.5% to 47%, the Apex Court had inter-alia noted as under:—

“7. The rule of rounding off based on logic and common sense is: if part is one half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.”

5. In the case of State of Punjab v. Asha Mehta, reported at

(1997) 11 SCC 410, 32.5% marks were allowed to be rounded off to 33% marks. It was observed as under:

“The question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission in fairness has been adopting in all other cases. The High Court noticed this aspect of the matter and also relied upon earlier procedure in support thereof. In that view of the matter, we do not think that it is a fit case for interference under Article 136 of the Constitution.

6. Similarly, the Rajasthan High Court in the case of **Rajul Arora v. Jai Narain Vyas University**, reported at RLW 2006 (2) Rajasthan 1054 rounded off 44.83% to 45%. Further in the case of **Dharmendra Kumar Shrivastava v. Jiwaji University**, reported at Gwalior 2002 (2) MPHT 303, 49.7% marks were rounded off to 50%.

7. The Supreme Court of India in the case of **State of U.P. v. Pawan Kumar Tiwari** (supra) has explained the rule of rounding off and it is applicable if part is one half or more, its value should be increased to one and if a part is less than half than its value should be ignored. It is on the basis of this principle that the rounding off was done in favour of the candidates as all of them had secured more than a part of one half or a more viz. 46.5% was rounded to 47%. Further in the case of **Rajul Kumar** (supra) the marks have been rounded off from 32.5% to 33%. In the case of **State of Punjab** (supra) the marks have been rounded off from 32.5% to 33%. In the case

of Dr.Ravinder Singh (supra) marks have been rounded off from 49.7% to 50%. In the case of Dharmendra Kumar Shrivastava (supra) 49.7% marks were rounded of to 50%.”

In view of the ratio of the aforementioned judgments, this Court is of the view that the present petition should be allowed. By applying the rounding off principle and noting that the petitioner who had scored 149.75% and by the principle of rounding off would get 150 marks out of 300 would be held eligible for DNB Paediatrics.

The judgments relied upon by the respondent would not apply as they are all distinct on their individual facts.

Petition is allowed and disposed of in the above terms.

INDERMEET KAUR, J

JULY 12, 2017

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