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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7435/2019**

AJAY SINGH Petitioner

Through: Mr. Ajay Singh Berwal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Anil Soni, CGSC for UOI with
Mr. Devesh, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

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ORDER
13.02.2020

Dr. S. Muralidhar, J.:

Review Petition No. 417/2019 (for review of the order dated 27th August, 2019)

1. This is a petition filed by the Respondents, seeking a review of the order dated 27th August, 2019 passed by this Court in W.P.(C) No. 7435/2019.

2. By the said order, the plea of the Petitioner, that the 54.95% marks obtained by him in the LL.B examination, should be rounded off to 55% to make him eligible to be called for an interview for the Judge Advocate General ('JAG') Branch of the Indian Army, was allowed by this Court. In doing so, this Court referred to the decisions in *State of U.P v. Pawan Kumar Tiwari* (2005) 2 SCC 10, *State of Punjab v. Asha Mehta* (1997) 11 SCC 410, and *Dharmendra Kumar Shrivastava v. Jiwaji University*,

Gwalior 2002 (2) MPHT 303.

3. In the present review petition, the Respondents have drawn the attention of the Court to a decision of the Supreme Court in ***Taniya Malik v. Registrar General of The High Court of Delhi (2018) 14 SCC 129***, where the express plea of rounding off of marks to meet the eligibility criteria was rejected by the Supreme Court. It is stated that due to inadvertence the said decision could not be placed before this Court when the petition was heard in the first instance.

4. Having gone through the decision in ***Taniya Malik v. Registrar General of The High Court of Delhi*** (*supra*), which has in turn referred to a number of other decisions of the Supreme Court, none of which were considered by this Court, the Court is satisfied that the order dated 27th August, 2019 deserves to be recalled.

5. The review petition is accordingly allowed. The order dated 27th August, 2019 is hereby recalled. W.P. (C) 7435 of 2019 is restored to file.

W.P.(C) 7435/2019

6. The facts leading to the filing of the writ petition have been noticed in the earlier order dated 27th August 2019, and requires to be briefly recapitulated.

7. The Petitioner applied for the post of JAG Branch of the Indian Army, for which applications were invited by an official notification dated 28th July, 2017, published on the website “www.joinindianarmy.nic.in”. The eligibility

criterion was 55% marks in a recognised degree in law.

8. The case of the Petitioner is that in his B.A. LL.B, he scored 2528 marks out of 4600 and the percentage works out to 54.95%. Since the eligibility criterion was 55%, the Petitioner was unable to fill up the online form. According to him, a difference of a mere 0.05% could not prevent him from applying for the JAG Branch of the Indian Army.

9. The Petitioner submitted that in *Taniya Malik v. Registrar General of The High Court of Delhi* (*supra*) the examination was to be held in two stages, followed by an interview, and it was therefore, distinguishable on facts.

10. A careful perusal of the decision in *Taniya Malik v. Registrar General of The High Court of Delhi* (*supra*) reveals that it was delivered in a batch of cases, one of which was W.P.(C) No.996/2017 (*Swati Gupta v. Registrar General, High Court of Delhi*). One of the prayers in that petition was to quash the result of the examination and seek revaluation of the papers. The Petitioner in that case had obtained 49.9% marks, which she prayed should be rounded off to 50%, as “is normally done” and that “she should be called for interview”.

11. This aspect was specifically dealt with by the Supreme Court in paras 22 to 24 of the decision in *Taniya Malik v. Registrar General of the High Court of Delhi* (*supra*), which read as under:

“22. With regard to question as to rounding off of the marks, in our opinion, when a particular aggregate is prescribed for eligibility, a person must meet the criteria without relaxation. It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate.

23. This Court, in *The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and Ors.*, (2012) 8 SCC 568, held as impermissible the rounding off of eligibility criteria in relation to qualifying examination for admission to the PG Course in MSc. (Nursing). Relying upon the decision rendered in *Orissa Public Service Commission & Anr. vs. Rupashree Chowdhary and Anr.*, (2011) 8 SCC 108, this Court observed:

“8. In *Orissa Public Service Commission v. Rupashree Chowdhary* (2011) 8 SCC 108 this Court in somewhat similar fact situation considered whether the eligibility criteria could be relaxed by the method of rounding-off. The Orissa Public Service Commission published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fill up 77 posts of Civil Judges (JD). Pursuant to the advertisement, the first respondent therein applied for the said post. She took the preliminary written examination. She was successful in the said examination. She, then, took the main written examination. The list of successful candidates, who were eligible for interview, was published in which the first respondent's name was not there. She received the marksheet. She realised that she had secured 337 marks out of 750 i.e. 44.93% of marks in the aggregate and more than 33% of marks in each subject.

9. As per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 (for short “the Orissa Rules”), the candidates who have secured not less than 45% of the marks in the aggregate and not less than

a minimum of 33% of marks in each paper in the written examination should be called for viva voce test. Since the first respondent therein had secured 44.93% marks in aggregate she was not called for interview/viva voce. The first respondent approached the Orissa High Court. The High Court allowed the writ petition. The appeal from the said order was carried to this Court.

10. After considering the Orissa Rules, this Court in *Rupashree Chowdhary case* held that Rule 24 thereof made it clear that: (SCC p. 111, para 10)

‘10. ... 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.’

This Court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It was observed that no power was provided in the statute/Rules permitting any such rounding-off or giving grace marks. It was clarified that: (SCC p. 112, para 10)

‘10. ... The [Orissa] 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.’

11. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. The judgment of the Division Bench of the Allahabad High Court in *Vani Pati Tripathi v. DG, Medical Education and Training*, 2002 SCC OnLine All 1005 and the judgment of the Full Bench of the Punjab and Haryana High Court in *Kuldip Singh v. State of Punjab* PLR (1997) 117 P&H 1 were

cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in *Orissa Public Service Commission v. Rupashree Chowdhary* (2011) 8 SCC 108 it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder have been shown to us, which permits rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in MSc (Nursing). When the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court in *Rajiv Gandhi University of Health Sciences v. G. Hemalatha*, 2010 SCC OnLine Kar 5108 erred in holding that the learned Single Judge in *G. Hemalatha v. Registrar*, 2010 SCC OnLine Kar 5189 was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission to the PG course. Such rounding-off is impermissible.”

24. Thus the principle of rounding off method could not be applied in view of the requirement to obtain minimum aggregate marks to be called for interview in the instant case.”

12. This Court further notes that the case closest to the case in hand is *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemlatha* (2012) 8 SCC 568 where it was clearly held that rounding off in relation to the “qualifying examination for admission to the PG Course in MSc (Nursing)” was not permissible. Further, the Court in the said case noted that no provision of any statute or any rules framed thereunder had been shown, which permitted such rounding off of marks in the eligibility criteria prescribed for the qualifying examination.

13. In *Orissa Public Service Commission v. Rupashree Chowdhary* (2011) 8 SCC 108, it was emphasized that there can be no relaxation or rounding off when the rules itself prescribe the minimum marks to be obtained by a candidate.

14. Mr. Anil Soni points out that the decisions referred to in the earlier order dated 27th August, 2019 passed by this Court pertained to percentage of reservation. For instance, in *Pawan Kumar Tiwari* (*supra*), the percentage reserved for general category worked out to 46.5%. The Respondent, who was at the top of the waiting list, in the general category, was denied appointment. He had contended that if the percentage of 46.5% is rounded off to 47%, he could be accommodated. Therefore, the case of *Pawan Kumar Tiwari* (*supra*), did not pertain to rounding off of marks in the qualifying examination.

15. The decision in *Asha Mehta* (*supra*) appears to have turned on the peculiar facts where, without any discussion of previous decisions, the Supreme Court declined to interfere with the decision of the High Court, which had permitted rounding off of 32.5% to 33%, but treated it as “purely an arithmetical calculation”.

16. On the other hand, the authoritative pronouncements of the Supreme Court in *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemalatha* (*supra*), *Orissa Public Service Commission v. Rupashree Chowdhary* (*supra*) and *Taniya Malik v. Registrar General of The High*

Court of Delhi (*supra*), which are specific to the context of marks obtained in a qualifying examination, categorically hold that rounding off of marks is not permissible in the absence of rules that permit it. In the present case too, no rule has been shown to the Court that permits such rounding off of the marks in the qualifying LL.B exam.

17. For the aforementioned reasons, the prayer of the Petitioner cannot be entertained. The petition is accordingly dismissed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 13, 2020

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