

(2014) 04 DEL CK 0095

In the Delhi High Court

Case No : Writ Petition (Civil) 2663 of 2014

Golakiya Aayush Parshottambhal

APPELLANT

Vs

Director, National Board of Examination

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Citation : (2014) 211 DLT 110

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Vaibhav Kalra, Advocate for the Appellant; Rakesh Gosain, Advocate for the Respondent

Judgement

Manmohan, J.—Present writ petition has been filed challenging the communication dated 11th March, 2014 as well as for a direction directing the respondent to round off the marks of the petitioner in DNB General Medicine from 191.50 to 192 and for further direction to consider the case of the petitioner for grace marks in accordance with Clause 4.3(iv) of the Brochure/ Prospectus issued by the respondent. Mr. Vaibhav Kalra, learned Counsel for petitioner submits that respondent failed to appreciate that there is no bar or prohibition in the Brochure of the respondent for rounding off the marks obtained by the petitioner.

2. Mr. Kalra further states that if the marks of the petitioner are not rounded off from 191.50 to 192, he will have to re-appear in the said examination and would lose a crucial session.

3. Mr. Kalra relies upon a judgment of the Supreme Court in *State of U.P. and Another Vs. Pawan Kumar Tiwari and Others*, wherein it has been held, "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".

4. Mr. Kalra also relies upon a judgment of the learned Single Judge of this Court

in *Jitender Singh v. Govt. of NCT of Delhi and Ors.* being W.P. (C) 18076/2006 wherein it has been held that merely providing the pass percentage would not tantamount to a prohibition against rounding-off.

5. Mr. Kalra further states that in the event the petitioner is granted rounding off marks, he would qualify to appear in the practical examination.

6. On the other hand, Dr. Rakesh Gosain, learned Counsel for respondent, draws this Court's attention to a judgment of the Supreme Court in *Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another*, , wherein the judgment of *State of U.P. & Anr. v. Pawan Kumar Tiwari* (supra) has been distinguished. The relevant portion of the judgment of *Orissa Public Service Commission and Another* (supra) is reproduced hereinbelow:

"7. The learned Counsel appearing for the respondents during the course of his arguments relied upon the decisions of this Court in *State of Orissa v. Damodar Nayak*, *State of U.P. v. Pawan Kumar Tiwari*, *Union of India v. S. Vinodh Kumar and Bhudev Sharma v. District Judge, Bulandshahr*. On scrutiny, we find that the findings recorded in the above referred cases are not applicable to the facts of the present case. The facts and findings recorded by this Court in the above referred cases are distinguishable to the facts of the case in hand. Almost all the aforesaid cases dealt with post or vacancies where it was allowed to be rounded off to make one whole post. Understandably there cannot be a fraction of a post.

xxx xxx xxx

10.....When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off....."

7. Subsequently, the Supreme Court in *The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and Others*, , after considering the earlier case law has held as under:

"12. No provision of any statute or any rules framed thereunder have been shown to us, which permit 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 erred in holding that the learned Single Judge 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."

8. In rejoinder, learned Counsel for petitioner submits that the judgments of the Supreme Court in *Orissa Public Service Commission and Another* and *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore* (supra) are distinguishable inasmuch as the said cases pertain to selection or admission to a particular

course rather than the present case which pertains to qualification for appearing in a practical examination.

9. Having heard the learned Counsel for parties, this Court is of the view that the judgment of the Pawan Kumar Tiwari (supra) has been distinguished by the Supreme Court itself and has been held to be confined to cases pertaining to posts or vacancies where rounding off is allowed to make one whole post.

10. Consequently, the said judgment has no application to the facts of the present case.

11. Even the judgment of this Court offers no assistance to the petitioner as subsequent to the learned Single Judge's judgment, the Supreme Court in Orissa Public Service Commission and Another as well as Registrar, Rajiv Gandhi University of Health Sciences, Bangalore (supra) has categorically held that when the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. In fact, in the aforesaid subsequent Supreme Court's judgment, it has been categorically held that till there is a provision in the statute or rule which permits rounding off of eligibility criteria, the same cannot be done.

12. This Court is also of the opinion that as DNB is a super-specialty course, an interpretation which lowers the standards or which does not promote merit should be avoided. Keeping in view the aforesaid subsequent Supreme Court's judgments, present writ petition is dismissed, but with no order as to costs.