

important feature of this transaction is that the room which was used as godown, was taken possession by the Bank Authorities who had put their own lock in the same which is a normal procedure in such transaction of pledge. This being so there is no escape from the conclusion that the tenant had parted with the possession and control of a part of the shop and has thus transferred his right under the lease. It cannot be said that it was only done as a matter of courtesy. Indeed, it was difficult for the landlord to prove that respondent No. 1 had actually charged some rent or other compensation from respondent No. 2 for allowing the use of the room as a godown of the Bank because evidence regarding the same could not possibly fall in the hands of the petitioner, the transaction being strictly between both the respondents."

(34) Thus, *Pannalal's case* (supra) stands on a different set of facts. It has been decided on its own facts. Therefore, the said case has no application where the tenant kept his own goods in the demised premises and allowed the Bank to put its lock to the said room as the said goods were pledged with the Bank as security for repayment of loan secured by the tenant from the Bank in the ordinary course of his business.

(35) We are, therefore, of the opinion that the decision is correct in so far as it relates to the facts of that case.

(36) In view of our foregoing discussion, we allow the revision petition and set aside the order of eviction passed by the Rent Controller as confirmed by the appellate authority. There will be no order as to costs.

---

S.C.K.

*Before K. Sreedharan, C.J., N.K. Sodhi & T.H.B.*

Chalapathi, JJ

KULDIP SINGH,—*Petitioner*

*versus*

THE STATE OF PUNJAB & OTHERS,—*Respondents*

CWP No. 12923 of 94

May 7, 1997

*Constitution of India, 1950-Arts. 14, 16 & 226-Punjab Civil Service (Judicial Branch) Rules-Rl. 7-Competitive selection—'Rounding off' of marks—50% qualifying marks in aggregate condition precedent for being called for interview and minimum 33% marks in each subject—Candidate securing 32.5% in one paper & 49.5% marks in aggregate—Claim for rounding off to the next whole number is untenable—Mandamus—Court*

---

cannot direct Public Service Commission to round off marks and to treat such candidate eligible for vive-voce test, since it results in disadvantage to the meritorious candidates—In absence of rule of 'rounding off' the method cannot be used to bring a candidate into the field of choice for selection to a post if he fails to qualify the minimum percentage.

(Asha Mehta versus State of Punjab and another, 1993 (3) R.S.J. 1 and Raj Deep Singh versus State of Punjab 1996(4) Services Cases Today 383, over-ruled)

Held, that a person who secures more marks in the examination must be treated as more meritorious than the one who secured lesser marks. It follows that law stated by the learned Single Judge in 'Asha Mehta v. State of Punjab & another' 1993(3) R.S.J. 1 and that by the Division Bench in 'Raj Deep Singh v. State of Punjab 1996(4) S.C.T. 383 do not represent the correct law. We disapprove the same. Method of rounding off percentage of marks obtained in the written examination for bringing a candidate into the field of choice for selection to a post is not warranted by law. We are also of the considered view that for selecting candidates to any post on competition marks obtained in the examination/test is not be rounded off to the next whole number unless the rule governing the selection specifically provides for the same.

(Para 16 and 19)

M.M. Kumar, Advocate with Ms. Saloni Sharma, Advocates for the  
Petitioner

G.S. Grewal, Advocate General, Punjab with Mr. S.S. Shergill, Addl.  
Advocate General, Punjab for the Respondent.

## JUDGMENT

K. Sreedharan, CJ

(1) These two writ petitions have come before us on a reference made by one of the learned Judges of this Court.

(2) The issue referred is as to whether the Public Service Commission in deciding the merits of a candidate is justified in granting the benefit of more marks by rounding off the marks obtained in the examination. Learned Judge doubted the correctness of the decision rendered by this Court in *Asha Mehta v. State of Punjab and another* (1), and that of a Division Bench in CWP No. 1112 of 1996. These decisions strike a different note from those in CWP Nos 4527/1993, 821/1996 and 12663/1995. For proper understanding of the issue involved in these cases, it is necessary to refer to the bare facts of the cases.

---

(3) Petitioners in these cases were candidates for the post of PCS (Judicial). In pursuance to the Notification issued by Public Service Commission, Punjab, petitioners submitted applications for the said posts. They satisfied the eligibility criteria fixed in the Notification. They were called for competitive examination which was held in October 1993. Their names did not appear in the list of candidates eligible for being called for interview. In the case of petitioner in CWP No. 12923/94, 347 marks were awarded to him out of total of 900 marks. In assessing the total marks, 65 marks obtained by him out of 200 in Criminal Law paper (III) was excluded because he did not secure 33% marks set up for the subject. 65 marks out of 200 works out to be 32.5%. Point five (.5%) per cent and above should be made whole number by rounding off. If it is so rounded off, 32.5% is to be treated as 33% and thereby he is eligible for being called for interview. This method was not resorted to by the Public Service Commission. Consequently, petitioner *inter alia* prays for issuance of a writ of mandamus directing the Public Service Commission to round off fraction of marks secured by him in Criminal Law Paper (III) as 33% and call him for interview for selection to PCS (Judicial).

(4) Petitioner in CWP No. 14279 of 1994 secured 446 marks out of 900. As per Rule, no candidate shall be called for *viva voce* test unless he obtained at least 50% qualifying marks in the aggregate in all the written papers. Since, he did not get 450 marks out of 900, he was treated as not eligible for being called for interview. 446 marks out of 900 works out at 49.5% marks. The argument is that 5% should be rounded off to the next whole number. When the marks obtained by the petitioner is so rounded off, it comes to 50%. Thereby, he becomes eligible to be called for interview. By this method petitioner gets the benefit of 4 more marks. On this basis, he prayed for issuance of a writ of mandamus directing the Public Service Commission to treat him as having secured the minimum requisite marks for being called for interview.

(5) Detailed written statements have been filed by the Public Service Commission, Punjab disputing the claims put forth by the petitioners in these writ petitions. It is contended in the written statements that in PCS (Judicial Branch) Rules, 1951, there is no provision allowing fraction of marks to be rounded off. Petitioner in CWP No. 12923 of 1994 failed in Criminal Law paper since he had obtained 65 marks as against the required 66 marks. The marks obtained by him in Criminal Law paper is not to be converted into percentage and then to be rounded off to the next whole number. Candidates were required to attempt 10 questions in criminal law paper (III) and each question carried 20 marks. Contention raised by the petitioner is that candidates were to attempt 9 questions carrying 180 marks alone, is incorrect and all candidates did in fact attempt 10 questions. Decision in CWP No. 4527/1993 is an authority for the proposition that

---

fraction of marks are not to be rounded off. Written statement concluded by stating that petitioner is not entitled to any of the reliefs asked for.

(6) Before dealing with the issue raised before us, we consider it worth while to refer to the provisions of Punjab Civil Service (Judicial Branch) Rules relating to the examination of candidates. Part 'C' of the Rules deal with examination of candidates. Rule 7 of the Rules was brought into existence by Notification No. G.S.R. 35/Const/Art. 234 and 309/Amd(25)/91 dated 4th June, 1991. It reads;

7(1) No candidate shall be credited with any marks in any paper unless he obtained atleast thirty three per cent marks in it.

7(2) No candidate shall be called for the viva-voce test unless he obtains at least fifty per cent qualifying marks in the aggregate of all the written papers:

Provided that the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes categories shall be called for the Viva-Voce test if they obtain forty-five per cent qualifying marks in the aggregate of all the written papers.

7(3) The minimum qualifying marks in the language paper Punjabi (Gurmukhi Script) shall be thirty-three per cent. The standard of language paper will be that of Matriculation Examination of the Punjab School Education Board or its equivalent.

8. The merit of the qualified candidates shall be determined by the Punjab Public Service Commission according to the aggregate marks obtained in the written papers and *Viva-Voice*;

Provided that in the case of two or more candidates obtaining equal marks, the candidate older in age shall be placed higher in the order of merit."

(7) From the above rule, it is seen that each candidate should get atleast 33% marks in each of the papers. The aggregate marks obtained by the candidate should be not less than 50%. This minimum limit is relaxed in the case of candidates belonging to Scheduled Casts, Scheduled Tribes and Backward Classes to 45% in the aggregate. Even candidates belonging to those categories should get at least 33% marks in each of the papers. If the total marks for a paper is 100, the candidate should secure 33 marks in that paper. Likewise if the total marks for the paper is 200, a candidate should secure 66 marks. A candidate who has secured 65 marks as against 66 marks prescribed by the rule, wants to have the same converted into percentage. 65 out of 200 works out to be 32.5%. Thereupon, he wants the decimal to be rounded off because it is half per cent. By resorting to this

---

course, 32.5% must be treated as 33% and thereby make him eligible for being called for Viva-Voca test. In other words, by resorting to mathematical squibbing, 65 marks should be treated as 66.

(8) As per Rule 7(2) quoted above, a candidate will get qualified to be called for viva-voce test if he secures at least 50% marks in the aggregate in all the written papers. Total marks set up for written examination is 900. So, a candidate should secure 450 marks in the aggregate in all the papers. A candidate who secured 446 marks out of 900 is certainly not eligible to be called for interview. He resorts to ingenuous procedure. According to him 446 marks out of 900 works out to be 49.55 percentage. 55% is to be rounded off to the succeeding whole number. In this way, he wants to be treated as one who has secured 50% marks. By this method, he gets the benefit of four marks in the aggregate. This argument is quite attractive, but according to us, it will result in granting premium for the failure. A candidate who failed in getting the requisite marks is to get the deficiency made good and then to enter into the field of choice by getting himself called for viva-voce test.

(9) If the argument advanced by the counsel representing the petitioners is accepted, it will lead to an absurd situation as described herein below:

Take the case of a candidate who has secured 65 marks as against 66 in two subjects. In those two subjects, he wants the marks secured converted to percentage. Thereby the marks secured will become 32.5%. Then it is to be rounded off making it 33%. Consequently, he gets advantage of two marks in two papers and gets through in both papers. Thereby he may secure 446 marks out of 900 in the aggregate. The marks obtained in the aggregate when converted into percentage, it will make 49.55% to be rounded off to 50%. Then he gets another advantage of four marks in the aggregate. Result of this process is that he can get benefit of 2 marks in two papers and thereafter another four marks in the aggregate to make him eligible for being called for interview/viva-voce test. At the interview, if he secures high percentage of marks, he may even top the list. This will allow him to have an undue advantage over the meritorious students who secured pass marks in all the papers and obtained 50% marks in the aggregate in all the papers.

(10) Rule 7(1) in unmistakable terms states that a candidate should get at least 33% marks in each of the paper. 33% is the rock-bottom marks fixed therein. So also, the rock-bottom for being called for viva-voce test is 50% marks in the aggregate in all the papers. According to us, the rule does not envisage the possibility of making eligible a candidate who did

---

not secure 33% marks in each paper and 50% in the aggregate for being called for viva-voce test. 33% of 50% as the case may be, is not to be assessed on the basis of rounding off the percentage of marks.

(11) If the marks and not the percentage is rounded off, the premium will not go to this shocking extent. A person who secured 65.5 marks in a paper may claim the benefit of rounding it off to the next whole number. The result of such a procedure may not be that shocking as the rounding off the percentage of marks. If rounding off the actual marks alone is resorted to, then a person who secured 449.5 marks or above, alone will be entitled to be considered as having secured 450 marks. In such a situation, the total benefit, a candidate may secure in the situation detailed above is of one or maximum two marks. Even such a benefit should not be granted in competitive examination where academically qualified persons are competing for competitive posts. In this world of high competition even 0.1 percentage of marks counts a lot.

(12) In *Asha Mehta v. State of Punjab and Another* (2), learned Single Judge of this Court allowed a candidate who secured 65 marks out of 200 to be treated as having obtained 33% marks by rounding it off. Principle of rounding off the marks was resorted to by the learned Single Judge because of the assertion made by the petitioner before him that Public Service Commission was adopting the procedure of rounding off the marks in the case of selection to the post of Lecturer. No rule of the Public Service Commission was placed before us which allows the Commission to round off the marks for selection to any post within their purview. Learned Advocate General, Punjab who appeared in this case on behalf of the Public Service Commission and the State asserted that no rule relating to recruitment to any post provides for rounding off the percentage of marks for selecting —candidates to any post. Be that as it may, selection to the post of PCS (Judicial)— is governed by special rules. They do not allow rounding off percentage of marks. In the light of the specific provisions in the rules, this Court was not justified in directing the Public Service Commission to round off the percentage of marks and then to treat the candidate as one who has become eligible for being called for viva-voce test. The learned Single Judge in the judgement observed:—

“There are two candidates from Panjab University, one getting 300 out of 600 and the other getting 298 out of 600 marks. In terms of percentage, first one gets 50% whereas the second one gets about 49.7%. Both would be held eligible. What is the difference if the Commission itself takes the examination and awards to one candidate 300 marks out of 600 and to the other 298, why in that case the criteria of rounding off should not be adopted?”

---

This observation was made while comparing the principle of rounding off adopted by the Commission in the case of Lecturers and not resorting to the same procedure in selecting candidates to PCS (Judicial).

(13) According to us, the above example given by the learned Single Judge itself brings out injustice to be meted out to meritorious candidates by rounding off the percentage of marks. This will result in more disadvantage to the meritorious candidates when we come across the proviso to Rule 8 of the Punjab Civil Services (Judicial Branch) Rules. As per that proviso, in case two or more candidates obtain equal marks, the candidate older in age should be placed higher in the order of merit.

(14) Decision in Asha Mehta's case (supra) was taken up in letters patent appeal. Division Bench dismissed the same without expressing any opinion on merits. It was then taken to the Supreme Court in Civil Appeal No. 3863 of 1993. The Apex Court dismissed the Special Leave Petition observing;

“a question whether 32.5% marks could be rounded off to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission in fairness has been adopted in all other cases. The High Court had noticed this aspect of the matter and also relied upon earlier precedent 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. Appeal is dismissed. No costs”.

This decision of the Apex Court cannot in our considered view be treated as one approving the judgment of the learned Single Judge. Supreme Court in the order quoted above did not lay down any law which is to be treated as precedent. Statements on matters other than law have no binding force. Reference may be made to *Municipal Committee, Amritsar v. Hazara Singh* (3). In that case, their Lordships have categorically stated that decisions which are essentially on questions of fact cannot be relied upon as precedents for decision of other cases.

(15) When a special leave petition is dismissed, it cannot be said that there has been a declaration of law by the Supreme Court coming under Article 141 of the Constitution of India. Further Civil Appeal No. 3863 of 1993 was moved before the Supreme Court not by invoking any right of appeal. Article 136 of the Constitution of India contemplates only a petition for special leave to appeal which is in the discretion of that Court. When an appeal filed invoking the provisions of Article 136 of the Constitution is dismissed, it cannot be taken that the order passed by the

---

High Court merges into that of the Supreme Court (Reference may be made to the decision in *L.M. Navakhara v. Keshavrao Eknathsa Tapar* (4). In this view of the matter, decision of the Supreme Court in Civil Appeal No. 3863 of 1993 referred to above, cannot be treated as one approving the decision in Asha Mehta's case (Supra).

(16) Learned counsel representing the petitioners brought to our notice decision of a Division Bench of the Court in *Raj Deep Singh v. State of Punjab* (5). In that case, two vacancies against seats reserved for freedom fighters were not filled up because none qualified the eligibility conditions of securing 100 marks out of 200 in the entrance test. Petitioner therein secured 99.5 marks. It was directed to be rounded off as 100 out of 200. Thereby petitioner was found eligible for admission to the course. Bench observed. "If it is less than half mark, it has to be rounded off to the lower figure. Marks in points are only relevant where the admission is to be given on the merit *inter se* between the students. For the purpose of eligibility, they are required to be rounded off." We are not in a position to agree with this observation. Take a case where against one vacancy two candidates were contesting, one having secured 100 marks out of 200 and another 99.5 out of 200. By resorting to rounding off method, second man is also treated as having secured 100 marks out of 200. In case, if the candidate who gets the benefit of rounding off, is older than the other, he will get higher rank. Consequently, he will have to be admitted to the course. This will result in doing injustice to the candidate who secured 100 marks in the examination. It will also amount to treating persons who are dis-similar. Similarly, unlikes can not be treated alike. A person who secures more marks in the examination must be treated as more meritorious than the one who secured lesser marks.

(17) Learned counsel representing the petitioners advanced an argument that by rounding off the percentage of marks obtained by the petitioners, they are not being selected to the post, but they are only becoming eligible for being called for *viva voce* test. On account of this no injustice is being caused to another candidate and, therefore, the prayers made in these writ petitions are to be allowed. We are not at all impressed with this argument. Persons who are not eligible for being called for *viva voce* test/interview are not to be made eligible and allowed to take part in the *viva voce* test. It will certainly result in unequals being treated as equals.

(18) Public Service Commission has got the right to short list candidates on the basis of marks and on higher education or technical qualifications. This position is settled by the Apex Court in the decision in

---

(4) AIR 1993 S.C. 2596

(5) 1996 (4) S.C. Today 383



---

*Madhya Pradesh Public Service Commission v. Nounet Kumar* (6). To call more candidates for *viva voce* test so that Public Service Commission will be able to get talented candidate is not an appealing argument. The argument that more are to be called for *viva voce* test to further public interest is according to our considered view, only to be stated to be rejected. The acceptance of the argument that more candidates are to be called for *viva voce* test by rounding off percentage of marks will result in justice to meritorious candidates and result in clear error of law which no court can support.

(19) From the above discussion, it follows that law stated by the learned Single Judge in Asha Mehta's case (*supra*) and that by the Division Bench in Raj Deep Singh's case (*supra*) do not represent the correct law. We disapprove the same. Method of rounding off percentage of marks obtained in the written examination for bringing a candidate into the field of choice for selection to a post is not warranted by law. We are also of the considered view that for selecting candidates to any post on competition marks obtained in the examination/test is not to be rounded off to the next whole number unless the Rule governing the selection specifically provides for the same.

(20) In view of what has been stated above, we find no merit in these writ petitions. They are accordingly dismissed. However, we make no order as to costs.

---

R.N.R.

*Before V.S. Aggarwal, J*

SHAM SUNDER JALAN,—*Petitioner*

*versus*

STATE OF U.T. CHANDIGARH,—*Respondent*

*Cri.R.* 691 of 95

7th May, 1997

*Code of Criminal Procedure, 1973—Ss. 313 & 386(b)(i)—Examination of accused u/s 313—Purpose of said examination—Incriminating material to be put to the accused—Questions should be small and precise—Examination of accused unsatisfactory—No prejudice shown—Effect of.*

*Held that*, purpose of examination of an accused under Section 313 Cr.P.C. is to enable him to explain in circumstances appearing in evidence against him. If the prosecution witnesses have deposed to any incriminating circumstances from which the guilt of the accused can be inferred, the accused person must be given an opportunity to explain the said