

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 434/87  
~~XXXXXX~~

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DATE OF DECISION 14.11.1990.

Shri Prem Singh	Petitioner
Shri Amit S. Chadha	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Mrs Avnish Ahlawat	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

*As*  
 (AMITAV BANERJI)  
 CHAIRMAN  
 14.11.1990.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN. NO. O.A. 434/87.

DATE OF DECISION: November 14, 1990

Shri Prem Singh

... Applicant.

Versus

Union of India & Ors.

... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.  
The Hon'ble Mr. I.K. Rasgotra, Member(A).

For the Applicant.

... Mr. Amit S. Chadha,  
Counsel.

For the Respondents.

... Mrs Avnish Ahlawat,  
Counsel.

(Judgement of the Bench delivered by  
Hon'ble Mr. Justice Amitav Banerji,  
Chairman)

A very interesting question of law arises in this case. The question is whether a fractional number can be rounded off into a whole number in a qualifying written test.

The applicant was an Assistant Sub-Inspector citing a qualifying test for Sub-Inspector. The Rules require that the candidates who obtain 60 per cent marks out of a total of 90 marks assigned for written test, shall only be eligible for interview. There were other marks which were to be added and these pertained to Service seniority, A.C.Rs, Good entries and cash reward, total absence of punishment as A.S.I. and sportsmanship. 25 marks were assigned for viva-voce and only those who secured 60 per cent marks in the written test, were entitled to appear in viva-voce. The applicant sat in the examination and he secured 53½ marks. He was not allowed to appear in viva-voce.

Consequently, he was not promoted to the rank of Sub-Inspector. He claimed that  $53\frac{1}{2}$  marks should have been rounded to 54 marks which were equivalent to 60% marks out of a total of 90 marks assigned for the written test.

The respondents' stand is that there are no instructions of the Government of India regarding rounding off the fractional marks in the departmental tests. In other words, the plea was that the fractional number could not be rounded off into a whole number. Since the applicant had not secured the requisite number of marks in the written test, he was not permitted to appear in viva-voce to be promoted as Sub-Inspector.

We have heard Mr. Amit S. Chadha, learned counsel for the applicant and Mrs Avnish Ahlawat, learned counsel for the respondents.

Before we go to the merits of the case, it will be necessary to state a few more essential facts. The relevant Rule on which the reliance was placed by the respondents is the order dated 5.12.1983 (Annexure 'J' to the O.A.), which reads as under:

"ORDER

The question of rounding off fractional marks to the next higher whole number in the promotional tests held by the Department has been under consideration in this Hqrs. It has now been decided that in future all the departmental tests both promotional and direct recruitment conducted by Delhi Police, all fractions of marks less than half awarded to a candidate shall be

ignored and half of mark or more shall be counted as one only once at the time of grand total".

Reference may also be made to Standing Order No. 49/81 for admission of names to Promotion Lists 'D', 'E' and 'F' (Ministerial) and particular to the Note -

"Candidates who obtain 60% or above marks in written and typing test will only be eligible for interview by the D.P.C."

Reference may also <sup>be</sup> made to the Delhi Police (Promotion and Confirmation) Rules, 1980 and the extract of List (E) (Ministerial) reads as under:-

"List (E) (Ministerial):- Confirmed Asstt. Sub-Inspectors (Ministerial) and stenographers who have put in a minimum of 6 year service in these ranks shall be eligible. The selection shall be done by the Departmental Promotion Committee on the basis of the recommendations of Departmental Promotion Committee on the basis of evaluation system based on (i) service record (ii) seniority (iii) Annual Confidential Reports (iv) Professional tests comprising:-

(i) Fundamental and Supplementary Rules, Leave, Pension and other rules applicable to Delhi Police.  
(ii) Delhi Police Act, Rules, Regulations, Manual and standing orders.

Precis writing, Noting/Drafting.

Financial Rules, Treasury Rules, Accounts, Budget and Audit.

Assistant Sub-Inspectors/Stenographers who obtain 60 per cent and above marks in the written test shall only be eligible for interview".

Another fact which needs to be mentioned here is that the Commissioner of Delhi Police had granted 10 persons the benefit of 1/2 mark to the marks obtained before

interview as no one was given fractional marks in the interview. It was urged that the similar benefit should have been accorded to the applicant. The applicant had prayed that the  $\frac{1}{2}$  mark in his written test should be rounded off to one mark in view of the existing instructions on the subject.

Reference may also be made to the rejection of the memorial given by the applicant to the Commissioner of Police, Delhi Administration and Ministry of Home Affairs. Mrs Ahlawat urged that there was no instructions regarding rounding off the fractional marks in the departmental test. Reference was also made to the Delhi Police (Promotion and Confirmation) Rules, 1980 where there is no provision for rounding off the fractional marks. She also referred to paragraph 6(ix) where the Commissioner of Delhi Police decided in December, 1983 that in future in all the departmental tests both promotional and direct recruitment conducted by Delhi Police all fractional marks be rounded off once at the time of grand total. She also referred to the mandatory aspect of securing 60% and above marks in the written test held in 1981 under the rule 16(iii). She urged that the question of rounding off the fractional mark in the written test does not arise.

It is true that when the examinations were held in 1981, there was no rule regarding rounding off the fractional marks to the whole number. It is also true that the Commissioner of Police had decided at his level that in

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future all the fractional marks are to be rounded off once at the time of grand total. It is thus clear that there was no Rule either way i.e. of allowing rounding off a fractional number into a whole number or the contrary in the 1980 Rules. The Commissioner of Police gave certain directions in his decision to grant upto  $\frac{1}{2}$  mark in rounding off on 5.12.1983. It is, therefore, clear that the Commissioner's stand expressed in the order dated 5.12.1983 will have no application whatsoever in the case of the applicant. The rounding off at the stage of grand total was introduced subsequently i.e. in 1983. It is also true that the representation by the applicant to the Commissioner of Police was turned down and he was not given the benefit of rounding off the marks obtained by him in the written test <sup>from</sup> 53 $\frac{1}{2}$  to 54. The Commissioner of Police declined to intervene and was of the view that since the applicant had not secured 60 per cent of the maximum marks in the written test, he would not be called for the viva-voce. The short point, therefore, is whether the Commissioner of Police was wrong in holding that the 53 $\frac{1}{2}$  marks obtained by the applicant cannot be rounded off to make it 54. It may be noted that 54 marks out of 90 constitute 60% marks. If it had been rounded off at that stage, he would have 60% marks and would be eligible for the viva-voce and if he succeeded in that, he would have got

the rank of Sub-Inspector and his seniority would have counted from that date.

The applicant is really aggrieved by this fact that he was promoted subsequently as Sub-Inspector without going through a test because by that time the rule of written test for Sub-Inspector had been done away. But in the process the applicant had lost his seniority which would have otherwise got had he been/<sup>found</sup>qualified for the viva-voce. There is nothing in the Rules 1980 for rounding off the fractional number into the next whole number nor is there any thing to disallow the Commissioner of Police to give  $\frac{1}{2}$  mark to bring the number into whole number. It is, however, discernible from the record that the Commissioner of Police had granted  $\frac{1}{2}$  mark each to 10 candidates from the years 1978 to January, 1981. The Sub-Inspector Mam Chand had secured  $49\frac{1}{2}$  marks. It was rounded off to the next stage i.e. 50 marks. This was done after coming into force 1980 Rules. It has been pointed out that the Gazette Notification was issued on 29.12.1980. This raises the question of equality and equal treatment under the law. It is true that Shri Mam Chand was a Scheduled Caste candidate and for him securing of 50 marks was essential to be promoted as Sub-Inspector.  $\frac{1}{2}$  mark was given by the Commissioner of Police to him to make him eligible. This was done in January, 1981 i.e. after the Delhi Police (Promotion and Confirmation) Rules, 1980 had come into effect. If the Commissioner of Police could act in a particular way in the absence of a specific rule

one way or the other, it was just and proper for the applicant to expect that a similar treatment will be meted out to him also. The question of adding it at the grand total did not arise for that instruction by the Commissioner of Police had not come into effect. It is well settled that an authority under the law cannot act differently on two identical placed persons for that would infringe the provisions of Article 14 and 16 of Constitution of India.

It may also be mentioned here that Shri Maxwell Pereira, Deputy Commissioner of Police (South District), New Delhi while forwarding the memorial submitted by the applicant to the Deputy Commissioner of Police, Hdqrs.(I), observed -

"...that the claim is justified and deserves due consideration. In view of the precedent available and pointed out by the ASI in his Memorial, perhaps it would not be a bad idea to re-consider the earlier decision taken at the PHQ. I have no hesitation in recommending the case of this ASI since in my opinion he deserves the rank of Sub-Inspector even otherwise".


We are, therefore, of the view that the Commissioner of Police should have allowed his representation and when the above facts were brought to his notice, he should have recalled his earlier orders and passed appropriate orders as in the case of Sub-Inspector Mam Chand. We are further of the view that the applicant has been able to make

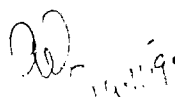


out a case for interference by the Tribunal. This was a case where the service of the applicant was affected. He was entitled to convert the 53½ marks to 54 marks in the qualifying test held in October, 1981.

We are further of the view that as a consequence of the above, the commissioner of Police, Delhi will consider the case of the applicant for promotion to the rank of sub-Inspector. He will take into consideration his result in the written test held in 1981 and hold an interview in accordance with Rules and thereafter if he qualifies, pass appropriate orders. We order accordingly. further, the order passed by the commissioner of Police, Delhi rejecting the representation of the applicant dated 28.10.1983 (Annexure-I) as well as the order on the representation of the applicant passed by the Delhi administration, Delhi are also set aside.

We further direct the commissioner of Police to complete the process within a period of three months from the date a copy of this order is served on him. The O.A. is allowed accordingly but we leave the parties to bear their own costs.

  
(I.K. RASGOTRA)  
MEMBER (A)  
14.11.1990.

  
(AMITAV BANERJI)  
CHAIRMAN  
14.11.1990.