

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 7435/2019**

AJAY SINGH

..... Petitioner

Through: Mr. Pranay Jain and Mr. Ajay Singh
Berwal, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Anil Soni, CGSC for UOI

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

27.08.2019

1. The Petitioner has approached this Court for directions to the Respondents to allow him to be called for an interview for the Judge Advocate General ('JAG') Branch of the Indian Army by treating 54.95% marks obtained by him in the LL.B. Examination as 55%.
2. The brief facts are that on 28th July, 2017 an official notification was published on the website 'www.joinindianarmy.nic.in' calling upon law graduates to apply online for the JAG branch of the Indian Army after selection by the Service Selection Board (SSB) through interview. The eligibility criterion was 55% marks in a recognised degree in law.
3. The Petitioner states that he completed his B.A., LL.B. degree scoring

2528 marks out of 4600. The percentage works out to 54.95%. In view of the minimum eligibility criterion of 55%, the Petitioner was unable to fill up the online form. According to the Petitioner, a difference of a mere 0.05% should not prevent him from applying for the JAG Branch of the Indian Army.

4. This petition was first listed for hearing on 12th July 2019, when notice was directed to be issued to the Respondents. Till date, no counter affidavit has been filed. However, the point being a short one, the Court has with the consent of parties taken up the writ petition itself for final hearing.

5. It is not in dispute that the Petitioner has scored 54.95% in his LL.B. exam. The copies of the mark sheet issued by the Hemvati Nandan Bahuguna Garhwal University have been enclosed with the petition. It is also not in dispute that to be called for an interview for entry into the JAG branch of the Indian Army the candidate should have scored 55% in the LL.B. Exam and that therefore the difference in the Petitioner's case is a mere 0.05%.

6. The principle of 'rounding off' has been recognised in law in a number of decisions. In ***State of U.P v. Pawan Kumar Tiwari (2005) 2 SCC 10***, 93 posts of Civil Judge (Junior Division) in the Uttar Pradesh Judicial Service were advertised. For the purpose of providing reservations, certain percentages were worked out for the different categories. The Respondent belonged to general category. In terms of the number of posts, the percentage reserved for the general category worked out to 46.50% as

against 50%. The Respondent, who was at the top of the waiting list in the general category, was denied an appointment. He contended that if the percentage of 46.5% would have been rounded off to 47% then he would have been accommodated. The High Court accepted the said contention and held that 46.5% should have been rounded off to 47%. This view was upheld by the Supreme Court as under:

“7. ... The rule of rounding off based on logic and common sense is: if a part is one half or more, its value shall be increased to one and if a 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.”

7. In ***State of Punjab v. Asha Mehta (1997) 11 SCC 410*** the question was whether 32.5% marks could be rounded off to 33%. The Supreme Court answered it in the affirmative and 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.”

8. In ***Dharmendra Kumar Shrivastava v. Jiwaji University, Gwalior 2002 (3) SCT 732 (MP)*** the learned Single Judge of the Madhya Pradesh High Court (Gwalior Bench) rounded off the 49.7% marks secured by the Petitioner in Higher Secondary as 50%. In that process, it referred to the decision of the Supreme Court in ***State of Orissa v. Damodar Nayak (1997) 4 SCC 560*** where 53.9% was treated as equivalent to 54% for purposes of release of grant-in-aid. This Court too has in ***Dr. Ravinder Singh v. Medical***

Council of India (2010) 168 DLT 95 and *Savita v. Central Board of Secondary Education 2013 SCC Online Del 1693* adopted the same principle.

9. For the aforementioned reasons, the Court directs the Respondents to treat the 54.95% marks secured by the Petitioner in the LL.B. Examination on the principle of rounding as 55% thus making him eligible to apply for the JAG Branch, Special Entry Scheme. Within a period of four weeks, the Respondents will either open an online portal to enable the Petitioner to fill up the form by indicating the percentage of marks obtained by him as 55%, or alternatively, the Respondents will permit the Petitioner to submit his application manually indicating the percentage of the marks obtained in the LL.B. degree as 55%.

10. The writ petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 27, 2019

mw