

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**


**ORIGINAL APPLICATION NO.778 OF 2015**

**DISTRICT : JALNA**

Manisha Hiralal Kothalkar. )  
Age : 32 Years, Occu.: Unemployed, )  
R/o. At Post : Walsavangi, Tq. Bhokardan,) )  
District : Jalna. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Copy to be served on the CPO in )  
MAT, Mumbai. )
2. The Secretary. )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )
3. The Director of Health Services, )  
St. Georges Hospital Compound, )  
4<sup>th</sup> Floor, V.T., Mumbai 400 001. )
4. The Joint Director of Health Services) )  
(Malaria, Falaria & Water Borne ) )  
Diseases), Survey No.94/ 1A Aarogya) )  
Bhavan, Alandi Road, ) )  
Opp. Vishrantwadi Police Station, ) )  
Mental Corner, Yerwada, ) )  
Pune 411 006. )...**Respondents**



**Shri A.S. Deshpande with Shri V.P. Potbhare, Advocates for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 22.08.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Applicant failed to get the appointment as Laboratory technician (the said post) in the test held in the year 2008 vide the Advertisement dated 7.10.2008. She is up before us by way of this Original Application (O.A.) aggrieved by manner in which her marks were calculated.

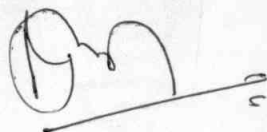
2. We have perused the record and proceedings and heard Mr. A.S. Deshpande, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

3. The Applicant holds Diploma in pharmacy and she is also B.Sc. B.Ed. She belongs to OBC category (Bari). But she competed for the said post by seeking appointment as a Female Candidate i.e. horizontal reservation (30% for



female). For that she had the requisite Non-creamy layer certificate (NCLC). She was found eligible for running for the said post. Certain positions obtain as a result of the order of the Aurangabad bench of this Tribunal in O.A.No.700 of 2011 (Nilam Devidas Chavan and Others Vs. The State of Maharashtra and 4 others, dated 8.4.2013 to which the present Applicant was the Applicant No.2 which was carried to the Hon'ble Bombay High Court (Aurangabad Bench) by way of W.P.N.4451 of 2013 (Nilam Devidas Chavan and others Vs. the State of Maharashtra and Others which was decided on 14.08.2014 along with four other Writ Petitions Nos. 4448 of 2013 (Rahul Suresh Kasar and Others) 4450 of 2013 (Nandkumar Ankushrao Godhave) 9678 of 2013 (Dhamshree Himmatrao Sarkate and another) and 4712 of 2013 (Zahir Dastgir). The net result of the orders in the above proceedings was that the move of the respondents to lower the passing percentage from 45% to 35% was upheld. So also was upheld what can be called negative marking for wrong answers which was  $\frac{1}{4}$  per wrong answer. The challenge to these moves of the Respondents failed.

4. Therefore, as far as the 2008 test was concerned, the minimum passing percentage was 35%. There would be negative marking of  $\frac{1}{4}$  marks per wrong answer.




However the challenge in this O.A. is not outside the norms laid down by the above referred judicial decisions. According to the Applicant there are arithmetical mistakes in calculating her marks especially in so far it relates to rounding off which according to the was wrong.

5. The Applicant invoked the Right to Information Act and secured the details regarding the marks obtained by her. She has hereto annexed them.

6. The bench-mark for success was 70 out of 200 (35%) 180 marks were for written examination and 20 for interview.

7. According to the Respondents the Applicant scored 56 marks after negative marking and 13.20 marks for interview. It totalled upto 69.20 falling short of 70 and hence the undoing of the Applicant. According to the Applicant however her score would be 57 after negative marking and add to it 13.20 and her aggregate would be 70.20. She had therefore crossed 70 and made it. Let us examine it closely to the extent warranted hereby.

A handwritten signature in black ink, consisting of a stylized 'G' followed by a long horizontal line extending to the right.

8. Pages 41, 55 and 100 of the paper book would be highly significant in this behalf. The date of the examination was 14.02.2010.


9. It is clear that there were five tests T1, T2, T3, T4 and T5. The maximum marks were 25, 25, 25, 25 and 80 respectively making up a total of 180. The Applicant did not attempt 7 out of 25 in T1 and 1 out of 80 in T5. She, in all did not attempt 8 out of 180. She attempted 172 out of 180 questions. She answered 80 correctly and 92 incorrectly. By negative marking i.e.  $92 / 4 = 23$ . Her net score would be  $80 - 23 = 57$ . But as mentioned above according to the Respondents it was 56 and not 57. AS to how the Respondents arrived at this figure and how to judge the rival cases let us reproduce the detailed chart on page 100. Its detailed explanation is given by the Applicant on page 55. But let us reproduce page 100, which is annexed by the Respondents nos.3 and 4 to their Additional Affidavit in reply filed on 11.02.2015.

#### Details of Testwise marks allocation to the Applicant.

| Description           | T1 GK (25) | T2MA (25) | T3 EN (25) | T4 TR (25) | T5 PK (80) | Total |
|-----------------------|------------|-----------|------------|------------|------------|-------|
| Total Questions       | 25         | 25        | 25         | 25         | 80         | 180   |
| Attempted answers     | 18         | 25        | 25         | 25         | 79         | 172   |
| Not attempted answers | 7          | 0         | 0          | 0          | 1          | 8     |

|                                    |      |       |       |       |       |    |
|------------------------------------|------|-------|-------|-------|-------|----|
| Right Answers                      | 11   | 18    | 14    | 17    | 20    | 80 |
| Wrong Answers                      | 7    | 7     | 11    | 8     | 59    | 92 |
| Penalty                            | 1.75 | 1.75  | 2.75  | 2.00  | 14.75 | 23 |
| Converted Score                    | 9.25 | 16.25 | 11.25 | 15.00 | 5.25  | 57 |
| Testwise converted score round off | 9.00 | 16.00 | 11.00 | 15.00 | 5.00  | 56 |

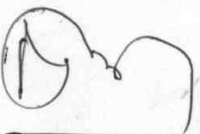
10. The chart is self-speaking. What has been done erroneously is that after the addition of the marks of 9.25, 16.25, 11.25, 15.00 and 5.25 and having arrived at the final figure of 57 testwise scores were rounded off. That has resulted in the reduction of one mark i.e.  $0.25 \times 4 = 1$ . Such a testwise rounding off was a clear error. A plain addition of the marks would leave no fraction and it would be a rounded off figure of 57. Rounding off could be done assuming it could be if after addition of the marks in all the five test a fraction had been left. In this connection useful guidance could be had from **The Registrar Rajiv Gandhi University of Health Science, Bangalore Vs. G. Hemlatha And Others (2012) 8 SCC 568**. This judgment and some other judgments were followed by the Hon'ble Rajasthan High Court in **Harsha Sharma Vs. The Rajasthan High Court Jodhapur D.B. Civil Writ Petition No.5695 of 2014, dated 19<sup>th</sup> December, 2014**. In fact, in **Registrar R.G.U.O.H.S.** (supra) as well as **Harsha Sharma** (supra), the Applicants were longing to seek the benefit of



the Principle of rounding off. That move on facts failed. The Principles laid down are that in the absence of provisions to that effect in the statutory rules, no such rounding off could be made for it might cause prejudice to the other competitors. In order to buttress the findings practical examples were taken. It is the said principle which must be applied to this O.A. In fact plain addition of marks would not have caused any difficulty at all. The negative rounding off was resorted to quite unnecessarily. That is legally also quite unsustainable.

11. No doubt the selection process is of 2008. The examination was held in 2010. Time has elapsed. It really has. May be another batch has also been appointed. It is quite possible that several others may have suffered like the applicant. And one argument that could possibly be made against the applicant is that any relief to her will induce several others, to rush to the Tribunal.

12. Now, one fact is for sure that her application for condonation of delay as informed by her Counsel having been granted and that hurdle removed there was nothing more that the applicant could be assailed for. Now it can quite certainly not be said that she should not even take recourse to the legal remedy which she has done quite

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relentlessly. The point is as to whether the argument of convenience should prevail over the consideration of justice. The answer is axiomatic. In **Coal India Ltd. Vs. Saroj Kumar Mishra AIR 2007 Supreme Court 1706** cited by Mr. Deshpande, it is held in paragraph 23 as below :-

**“23.** The flood gate argument also does not appeal to us. The same appears to be an argument of desperation. Only because there is a possibility of flood gate litigation, a valuable right of a citizen cannot be permitted to be taken away. This court is bound to determine the respective rights of the parties.”

The above passage is a complete answer to all that the respondents might have wanted to ask. It cannot be held on facts that any third party would be irretrievably prejudiced. Therefore there must be a limit to let the respondents take advantage of their own wrong. For no rhyme or reason they unnecessarily indulged in rounding off in an untenable manner. Much as they would like the applicant cannot be “bundled off” in the process of rounding off of the marks. Something that stares in the judicial face cannot just be glossed over or ignored.

13. It is hereby declared that the rounding off as indulged by the respondents and reflected by pages 41, 55 and 100 of this O.A. is unsustainable in law. It is struck





down. It is directed that in the five tests the applicant be shown to have scored 57 marks. Add to it 13.20 marks in the interview. The respondents no. 2 to 4 are directed to correct the marks of the applicant and if she is found eligible and fit upon compliance with this direction to appoint her to the said post within four weeks from today. The right of the applicant to seek post appointment any other relief by way of representation/s to the respondents is left intact in behalf of notional seniority and pay fixation. The learned Advocate Shri Deshpande submits that the Applicant shall not claim back-wages.

14. This Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**22.08.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**22.08.2016**

Mumbai

Date : 22.08.2016

Dictation taken by :

S.K. Wamanse.

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