

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 748 OF 2014(Mumbai)

ORIGINAL APPLICATION NO. 507 OF 2012(A'bad)

DISTRICT : JALGAON

Shri Rahul Bhaskar Kalaskar,)
Aged: 24 years, Occu: unemployed,)
Plot No.23, B, Near Civil Hospital,)
Dist. Jalgaon.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through: Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 32.)
(Copy to be served on the C.P.O.,)
MAT, Aurangabad.)
2. The Member Secretary,)
Regional Selection Committee &)
Superintending Engineer (Doors))
Central Plans Organisation &)
Circle Officer, Nasik Circle,)
Nasik.)
3. Bhamare Dinesh Ramesh,)
C/o Regional Selection Committee &)
Superintending Engineer (Doors))
Central Plans Organisation &)
Circle Officer, Nasik Circle,)
Nasik.)...**Respondents**

2/1

Shri A.S. Deshpande with Shri V.P. Potbhare, learned Advocate for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents No. 1 & 2.

Shri K.R. Jagdale, learned Advocate for the Respondent No.3.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 11.11.2014

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S. Deshpande with Shri V.P. Potbhare, learned Advocate for the Applicant, Ms. N.G. Gohad, learned Presenting Officer for the Respondents No. 1 & 2 and Shri K.R. Jagdale, learned Advocate for the Respondent No.3.

2. This Original Application is filed seeking appointment to the post of Chokidar pursuant to the

Written Examination held on 26.2.2012 by the Respondent No.2.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued an advertisement in January, 2011 for recruitment to various class IV posts. The Applicant has applied for the post of Chokidar and appeared for the written test on 26.2.2012 from Scheduled Caste category. He scored highest marks from his category but the Respondent No.2 declared the Respondent No.3 as selected on the ground that both of them had scored equal marks and the Respondent No.3 was preferred as he had higher educational qualification and senior in age. Learned Counsel for the Applicant argued that the Applicant had scored 54 out of 75 marks in the written examination and 18.40 marks out of 25 marks in oral test, making a total of 72.40 marks. The Respondent No.3 had scored 50 marks in the written examination and 21.6 marks in oral test, making a total of 71.60 marks. He produced copy of the original records in support of his contention which is at page 26-D of the Paper Book. Learned Counsel for the Applicant argued that the Respondent No.2 has illegally rounded off marks obtained in oral test, which has resulted in both the Applicant and the Respondent No.3 obtained equal marks. Then relying on G.R. dated 27.6.2008, which provides that if more than one candidates have secured equal marks, the person having higher qualification will

31

be preferred the Respondent No.2 had selected the Respondent No.3. Learned Counsel for the Applicant contended that the G.R. dated 27.6.2008 is applicable to selection of class-III posts and does not apply to class-IV, posts.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent No. 1 & 2 that the Applicant is not stating the correct position. The Applicant and the Respondent No.3 did obtain 54 and 50 marks respectively in the Written Examination. There was oral interview which was conducted by committee of 5 members including chairman. Each members gave marks out of 25 and average was then calculated. The Applicant got $21+17+16+16+22=92$ average of which was 18.4 which was rounded off to 18. The Respondent No.3 got $22+20+23+21+22=108$, average of which was 21.6, which was rounded off to 22. As a result both the Applicant and the Respondents No.3 got 72 marks and the Respondent No.3 was selected as he was more qualified and was also senior in age.

5. Learned Advocate Shri K.R. Jagdale on behalf of the Respondent No.3 adopted the arguments of Learned P.O. He also relied on the judgement of Hon'ble Supreme Court in State of U.P. and another Vs. Pawankumar Tiwari and others: AIR 2005 SC 658. It was held by Hon'ble Supreme Court that the rule of rounding

4

off is based on logic and common sense. 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. Learned Advocate Shri Jagdale contended that the minutes of the meeting held on 14.5.2012 disclose that it was decided in advance that there will be 25 marks for interview and each member of committee will award marks out of 25, which will be added up and average worked out. If the average marks was not in full number, fraction of less than 0.5 was to be ignored and fraction of more than 0.5 was to be treated as one. On this basis both the Applicant and the Respondent No.3 scored total of 72 marks. The Respondent No.3 was selected as he had better qualification and was senior in age.

6. We find that the outcome of this O.A. depends on the question, whether marks in a competitive examination are required to be rounded off, before select list is made. We have carefully perused the judgement of Hon'ble Supreme Court in Pawan Kumar's case (supra). It is no doubt rule of common sense that figures consisting of full number and fractions should be rounded off in most of the situations. In the case before Hon'ble Supreme Court, number of vacancies in various categories were to be worked out. Obviously, the vacancies cannot be in fraction. They have to be in full numbers and therefore, rounding off is a must. In a competitive examination relative merit of various

candidates is required to be judged. Even a fraction of a mark can make a lot of difference. We find that there was no rationale for the selection committee to decide in advance that marks obtained in the interview shall be rounded off after averaging. In fact, the actual average of the marks obtained in the interview was required to be added to the marks obtained in the Written Examination to determine relative merits is the present case. The judgement of Hon'ble Supreme Court is clearly distinguishable. In the present case, the Applicant evidently scored 72.4 marks while the Respondent No.3 scored 71.6 marks. The Applicant was, therefore, more meritorious and his claim could not have been overlooked.

7. The Respondent No.3, who was selected, has no role in the whole process. We feel that he should not suffer, having been already selected and working in the post. He is an innocent victim. The Respondent No. 1 & 2 may consider appointing him in any vacancy available now. The Applicant, is eligible to be appointed a Chokidar in pursuance of the selection process, in which he was undoubtedly more meritorious than the Respondent No.3. The Respondents No. 1 & 2 are directed to appoint the Applicant as Chokidar, if he is otherwise eligible, from the date on which the Respondent No.3 was appointed to the post of Chokidar, within a period of one month from the date of this order. The

Applicant will be eligible for all service benefits except back wages. The O.A. is disposed of accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 11.11.2014

Place : Mumbai

Dictation taken by : SBA

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