

[Supreme Court of Pakistan]

Present: Sh. Azmat Saeed, Faisal Arab and Syed Mansoor Ali Shah, JJ

Civil Appeal No. 700 of 2016

(On appeal from judgment of Lahore High Court, Lahore dated 10.12.2014, passed in W.P. No. 2596 of 2014)

and

Civil Petition No. 3832 of 2016

(On appeal from judgment of Lahore High Court, Lahore dated 29.11.2016, passed in W.P. No. 30770 of 2016)

Mian SHAUKAT ALI and another---Appellant/Petitioner

Versus

PUNJAB PUBLIC SERVICE COMMISSION and others---Respondents

Civil Appeal No. 700 and Civil Petition No. 3832 of 2016, decided on 14th November, 2018.

Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act (III of 2006)---

---S. 8(1)---Competitive examination for post of Deputy Prosecutor General---Psychological assessment---Rounding off of marks to next whole number---Permissibility---Maxim expressio unis est exclusio alterius---Scope---Policy Decision No. 19.18 relating to Interviews by the Punjab Public Service Commission (PPSC) specifically provided that average scores of the members of the Interview Committee could be 'rounded off', while Policy Decision No. 19.16 relating to psychological assessment did not expressly provide such concession---Maxim expressio unis est exclusio alterius i.e., the express mention of one thing implies the exclusion of the other thing, was applicable to the present case---Mentioning of rounding off in case of average marks obtained in the interview and the absence of such a concession for the marks obtained in psychological assessment clearly showed that the Punjab Public Service Commission never intended to extend the benefit of rounding off to the marks obtained in psychological assessment---Clear exclusion of rounding off in the case of psychological assessment under the relevant Policy also stood on a logical plane, as a total of only 5 marks were allocated for the psychological assessment, and rounding off, either up or down by a value of 0.5 amounted to 10% change in the total marks---Such change was a sizable percentage and could unfairly bridge the well-earned distinction between competitive candidates and weaken the credibility of the result---Supreme Court observed that any number could be round up to the next whole number or round down to the same whole number, depending on the value being 0.5 or more or less, however, the rule of rounding off, being a rule of convenience, must be applied with caution, so as not to give an unfair advantage to a candidate who had scored low or to disadvantage a candidate who had scored high.

N.S. Bindra's - Interpretation of the Statutes, 10th Edition, p.770 ref.

Malik Muhammad Qayyum, Senior Advocate Supreme Court along with Ch. Akhtar Ali, Advocate-on-Record for Appellant (in C.A. 700 of 2016).

Razzaq A. Mirza, Additional A.-G. for Respondent No. 1 (in C.A. 700 of 2016).

Nemo for Respondent No. 2 (in C.A. 700 of 2016).

Mushtaq Ahmed Mohal, Advocate Supreme Court for Respondents Nos. 3 and 5 (in C.A. 700 of 2016).

Mushtaq Ahmed Mohal, Advocate Supreme Court for Petitioner (in C.P. 3832 of 2016).

Nemo for Respondents (in C.P. 3832 of 2016).

Date of hearing: 14th November, 2018.

JUDGMENT

SYED MANSOOR ALI SHAH, J---The question before the Court in the instant appeal and the connected C.P.L.A. No. 3832 of 2016 is, whether marks obtained in the psychological assessment by the candidate in the competitive examination for the post of Deputy Prosecutor General (BS-18) can be rounded off to the next whole number, as are the marks for the interview granted by the Interview Committee under the "Policy Decision"¹ framed by the Punjab Public Service Commission (PPSC)?

2. The facts are that the appellant applied for the post of Deputy Prosecutor General (BS-18) in pursuant to a public advertisement. He secured 103 marks out of 200 in written examination and 62.50 marks out of 100 in the interview, hence obtaining a total of 165.50 marks. The last candidate selected for the post obtained 166 marks, hence the appellant missed the merit and was not selected for the post.

3. The case of the appellant is that if his marks in the psychological assessment i.e., 2.5 out of 5 marks, were to be rounded off to the next whole number i.e., from 2.5 to 3, his total marks would become 166 and he would equal the marks of the last candidate appointed to the post. In case of a tie, he comes out successful under Policy Decision No. 20.11, which gives preference to inter-se seniority on the basis of age. Learned counsel argued that psychological assessment is part of the interview, therefore, the policy of rounding off, applied to the interview, should also apply to the marks awarded for psychological assessment. He further relied on the definition of "interview" under Regulation 3(O) of the Punjab Public Service Commission Regulations, 2000 ("Regulations") to submit that interview includes psychological assessment. He added that under Policy Decision No.19, there is an express provision for rounding off the marks granted in the interview, whereas the Policy is silent as regards the marks obtained in the psychological assessment, hence the rounding off facility be extended to the marks obtained in the psychological assessment.

4. Learned Law Officer on the other hand relied upon Policy Decision No.19 of the PPSC to submit that the concession of rounding off is only available to the marks obtained in the interview and as the psychological assessment is not a part of the interview under Policy Decision No.19.18, its marks cannot be rounded off.

5. The appellant challenged the failure on the part of PPSC to round off his marks in the psychological assessment before the Lahore High Court. The petition was dismissed vide impugned judgment dated 10.12.2014 on the ground that the Policy explicitly provided for rounding off for the average marks obtained in the interview but no such concession was available for the marks obtained in psychological assessment. The appellant preferred a petition, against the said judgment, before this Court. Leave was granted vide order dated 3.3.2016 to consider whether rounding off was possible for the marks obtained in psychological assessment.

6. We have heard the learned counsel for the parties and have examined the record. As per Policy Decision No.19.16 of the PPSC, psychological assessment is done after a candidate qualifies the written examination. Psychological assessment entails intelligence test, group discussion, psychological test and short essay, etc. The candidates who go through psychological assessment are then called for interview and marks of the psychological assessment are added to the academic qualification in the candidate's award sheet at the time of the interview. Psychological assessment is an assessment carried out prior to the interview but its marks, for the purposes of tabulation of the result are included in the 100 marks allocated for the interview.

7. As per Policy Decision No.19.18(a and b), a candidate is interviewed by the Interview Committee comprising two groups i.e., Members of PPSC and Advisors/Subject Specialist/Departmental Representative in the following manner;

Policy 19.18

- a. Award of Interview Marks by Members of Punjab Public Service Commission. The Members of Commission award mark as separate group. Their average of marks awarded is also calculated separately. If average comes out to be in fraction, the value of 0.5 and above will be converted to the next whole number while fraction less than 0.5 will be ignored.

- b. Award of Marks by Advisors/Subject Specialist/ Departmental Representatives. All other members of interview committee i.e. Advisors/Subject Specialists, Departmental Representative award marks as the second group. The average of the marks given by all of them is calculated separately. If average comes out to be in fraction, the value of 0.5 and above will be converted to the next whole number while fraction less than 0.5 will be ignored."

As per Policy Decision No.19.31 (h), the marks of the interview are tabulated as under:

Deputy Prosecutor General (BS-18)

Interview 100 Marks

(1) Psychological Assessment 05 Marks

(2) Viva Voce

a. Commission 70 Marks

b. Advisor(s)/Departmental

Representative 25 Marks

As shown above, the two groups award separate marks, each member of the two groups award marks out of 70 and 25 marks, respectively², thereafter, average of the total marks granted by the members of each group are calculated and in case the said average comes out to be in fraction, value of 0.5 and above is converted into next whole number, while fraction less than 0.5 is ignored. The Policy specifically provides for rounding off of the average score awarded by the Interview Committee in the above manner.

8. Policy Decision No. 19 deals with Interviews while Policy Decision No.19.18 specifically provides that average scores of the members of the two groups of the Interview Committee be rounded off (as mentioned above) while, Policy Decision No. 19.16 provides for psychological assessment and does 'not provide for any rounding off of the marks obtained in the said assessment. Therefore, the Policy expressly provides for rounding off of the average marks in the interview but does not extend such concession in the case of psychological assessment. The maxim *expressio uni est exclusio alterius* i.e., the express mention of one thing implies the exclusion of the other thing, comes in handy to understand the construction of the Policy, which is even otherwise clear. "On a principle of interpretation that what is left unexpressed, was in all probability not intended at all³." The express mention of rounding off in case of average marks obtained in the interview and the absence of such a concession for the marks obtained in psychological assessment clearly shows that the Punjab Public Service Commission never intended to extend the benefit rounding off to the marks obtained in psychological assessment, as is their stated position before us.

9. Regulation 3(o) while defining "interview" provides that "where it may be so required, also includes psychological assessment, credit of additional qualifications, distinctions and achievements." In this case, Policy Decision No. 19.16 does not include psychological assessment as part of the interview, except for calculating the total marks of the interview, therefore Regulation 3(o) is not applicable.

10. A number can be round up to the next whole number or round down to the same whole number, depending on the value being 0.5 or more or less. The general purpose of rounding up is sheer convenience and keeps the arithmetic simple and easy for the purposes of calculation. The clear exclusion of rounding off in the case of psychological assessment under the Policy also stands on a logical plane. With total 5 marks allocated for the psychological assessment, rounding off, either up or down by a value of 0.5 amounts to 10% change in the total marks. This is a sizable percentage and can unfairly bridge the well earned distinction between competitive candidates and weaken the credibility of the result. The impact of rounding off is almost negligible i.e., 0.5% if it is allowed where the total marks are 100. So while the rule of rounding off, is a rule of convenience, it must be applied with

caution, so as not to give an unfair advantage to a candidate who has scored low or to disadvantage a candidate who has scored high.

11. For what has been discussed above, we are not inclined to interfere in the impugned judgment of the Lahore High Court. Leave is, therefore, declined and this petition is dismissed.

12. Before parting, it is noted with concern that Mr. Mushtaq Mohal, learned ASC appearing on behalf of private respondents Nos. 3 to 5, in the instant case, opposed the case of the appellant and also represented the petitioner in the connected matter, thereby supporting the case of the appellant in the instant case, taking such somersaults is not becoming of an advocate and must be avoided.

MWA/S-41/SC Petition dismissed.