

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 02.11.2023
Pronounced on:08.11.2023

WP(C) No.2233/2023

NADEEM-UR-REHMAN & ORS. ...PETITIONER(S)

Through: - Mr. Salih Pirzada, Advocate.

Vs.

UNION TERRITORY OF J&K & ORS. ...RESPONDENT(S)

*Through: - Mr. Mohsin S. Qadiri, Sr. AAG, with
Ms. Maha Majeed, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged the provisional select of NEET-PG 2023 issued vide notification No.065-BOPEE of 2023 dated 20.08.2023. Challenge has also been thrown to communication No. BOPEE/Exam/10/ 2023 dated 22.08.2023.

2) Petitioners No.1, 2 and 3 are stated to be belonging to Sports Category having secured UT rank 162, 167 and 184 respectively. Petitioners No.4 to 12 are stated to be belonging to Reserved Backward Area category having secured UT rank 274, 309, 348, 281, 279, 233, 461, 449 and 305 respectively. According to the petitioners, consequent upon declaration of NEET-PG 2023 result, they submitted their preference of disciplines online whereafter petitioners No.1 to 8 were allotted various disciplines, which according to them is not in accordance with their preference. It has been submitted that the

preferred disciplines chosen by petitioners No.1 to 8 have been allocated to reserved category candidates who have secured lesser merit. So far as petitioners No.9 to 12 are concerned, it has been stated that the said petitioners have not been allocated any seat because the preferences of disciplines opted by them have been allocated to the candidates of reserved categories having lower merit. In para (5) of the petition, a tabulated statement highlighting the nature of the alleged discrimination meted out to the petitioners has been given which is reproduced as under:

Petitioner No./Rank	Discipline Allotted	Preference number of discipline allotted	Entitled discipline and preference number	Rank/Category/Name of Lower merit candidate allotted the entitled discipline
1/Rank 162	MS Ortho. GMC Jammu in OM	22	MD/MS Obstetrics and Gynae. In GMC Srinagar (7)	169/ OSC/ Nighat Nabi
2/Rank 167	MS ENT GMC Srinagar in OM	18	MD/MS Obstetrics and Gynae. In SKIMS Srinagar (2)	182/ RBA/ Jaffar Ahmad Bhat
3/Rank 184	MD Anaesthesia in OM	25	MD Pediatrics in GMC Srinagar (12)	190/ OSC/ Mehraj-Ud-Din Kumar
4/Rank 309	MD Anaesthesia in RBA	17	MS Surgery in GMC Srinagar (5)	4731 OSC/ Suhail Abbass
5/Rank 309	MD Anaesthesia GMC Srinagar in RBA	29	MS Surgery in SKIMS Soura Srinagar (14)	29 466/ ST/ Mudasser Choudhary
6/Rank 348	MD Anaesthesia at GMC Srinagar in RBA	32	MS Surgery in GMC Srinagar (14)	557/ OSC/ Suhaib Bashir
7/Rank 281	MD Anaesthesia in SKIMS in RBA	22	MS General Surgery in GMC Jammu (12)	283/ ALC-IB/ Sadika Sharma
8/Rank 279	MD Anaesthesia in SKIMS in RBA	22	MS General Surgery in SKIMS (9)	296/SC/ Akhilesh Angoran
9/Rank 233	Not selected	-	MS Ortho. In GMC Srinagar (14)	341/ PSP/ Sohail Khan
10/Rank 461	Not selected	-	MD Psychiatry in SKIMS Soura Srinagar (2)	493/ ALC/ Mir Masood Ul Haq
11/Rank 449	Not selected	-	MS General Surgery in GMC Jammu (1)	509/ ALC-IB/ Manhas Anjali
12/Rank 305	Not selected	-	MS Orthopedics in GMC Jammu (7)	355/ SC/ Jaswinder Pal Singh

3) It has been pleaded that petitioners No.1 to 3, who belong to Sports Category, have secured high merit and, as such, they have been treated as open merit candidates but they have been denied the benefit of Rule 17 of the Reservation Rules, inasmuch as they have not been allocated their preferred disciplines, which instead have been allocated to those reserved category candidates who have secured lesser merit than that of the said petitioners. Similar treatment is stated to have been meted out to petitioners No.4 to 8 who belong to RBA category, as according to the petitioners they have also been denied the benefit of Rule 17 of the Reservation Rules. It is also pleaded that petitioners No.9 to 12, who belong to the reserved category of RBA, have not been allotted any seat in the reserved category and the candidates who have secured inferior merit have been allocated seats associated with preferred disciplines of petitioners No.9 to 12.

4) It has been submitted that the petitioners after the issuance of impugned provisional list preferred their objections to the same highlighting the fact that Rule 17 of the Reservation Rules has not been applied in their cases in an appropriate manner. However, the objections of the petitioners were rejected by the respondents in terms of impugned communication dated 22.08.2023 issued by respondent No.2 in which they have justified the exclusion of the petitioners from the preferences and the seats.

5) The petitioners have challenged the impugned provisional list and the impugned communication on the grounds that the action of

the respondents is in violation of the J&K Reservation Rules as the petitioners have been denied the preferred disciplines/seats which have been allocated in favour of the reserved category candidates having inferior merit. It has been further contended that the respondents have interpreted and applied Rule 17 of the Reservation Rules in an erroneous manner which has worked to the prejudice of the petitioners. It has been contended that petitioners No.1 to 3, who are Meritorious Reserved Category candidates (MRCs), have been put in a disadvantageous position as compared to reserved category candidates who have secured lesser merit, inasmuch as these petitioners have not been allocated their preferred disciplines.

6) The respondents have contested the writ petition by filing a reply thereto. In their reply, it has been submitted that three meritorious reserved category candidates (MRC's) under the Sports Category, namely, Pandit Abrar Ahmad, Mir Aamir Fayaz and Shams-ul-Haq, who had secured higher ranks than petitioners No.1 to 3, were allocated disciplines of their choice by application of Rule 17 of the Reservation Rules as they were not getting disciplines of their choice in the open merit category. It has been submitted that at the time of application of Rule 17 of the Reservation Rules, the MRCs to the extent of the number of seats available in their respective reserved categories and not beyond that would get the benefit of Rule 17. It has been contended that by applying Rule 17 in this manner, balance is maintained between open merit and category seats or else the balance

would get disturbed. It has been submitted that in the case of petitioners No.1 to 3, Rule 17 could not be applied as there were only three disciplines to be allocated to the Sports category which were allocated to three MRCs who were having better merit than petitioners No.1 to 3.

7) Regarding the petitioners who belong to RBA category, it has been submitted that as per the Reservation Rules, quota of 10% is allocated to the said category and for the Session 2023-24, twenty-nine seats were earmarked for the said category. It has been pleaded that twenty-six MRC candidates belonging to RBA category were extended the benefit of Rule 17 of the Reservation Rules and, accordingly, due to non-availability of chosen discipline in the open merit category, these twenty-six MRCs of RBA category were allocated seats from the reserved pool and the left-over disciplines were allocated to three reserved category candidates of RBA thereby exhausting the quota of RBA category candidates. According to the respondents, because the disciplines reserved for RBA category were exhausted after allocating these disciplines to twenty-six MRCs under the said category and three candidates under the same category who were having better merit than petitioners No.4 to 8, therefore, Rule 17 of the Reservation Rules could not be applied in the case of said petitioners. It has been submitted that petitioners No.4 to 8 are not MRCs, therefore, there is no question of applying Rule 17 in their cases. Regarding petitioners No.9 to 12, it has been submitted that they

were not allotted any seat as the choices given by them in their preference form were not available at their ranks at the time of allocation of the seats.

8) The stand of the respondents is that in Session 2023-24, J&K BOPEE has applied Rule 17 to the extent of number of seats allocated to a particular reserved category in respect of meritorious candidates of that particular category and after application of Rule 17, if any meritorious reserved category candidate was left, he has been considered as an open merit candidate and allocated a seat from open merit category. This course of action has been adopted by the respondents because according to them, before Session 2022-23, Economically Weaker Section (EWS) category was not being considered as a separate category and, as such, Rule 17 of the Reservation Rules was not made applicable to the candidates belonging to said category. It has been stated that this course of action was causing practical issues during the course of counselling for the Session 2022-23.

9) It has been submitted that an opinion has been rendered by the Department of Law, Justice and Parliamentary Affairs in consultation with Social Welfare Department that a member of EWS category cannot be debarred from allotment of seat under open merit category if such candidate makes his/her position in the open merit category on the strength of his/her merit even if he/she has applied under EWS

category. According to the respondents, on the basis of this opinion, EWS category is to be clubbed with other reserved category seats and then allotted seats as per their *inter se* merit. It has been further submitted that EWS quota has been increased only in few branches/disciplines in PG courses and not in all branches and disciplines. It is being contended that if J&K BOPEE would have applied Rule 17 in the manner as was being applied upto the previous session, it would have created a chaos and confusion resulting in disturbance of overall reserve pool because EWS category is not contributing in formation of the left-over pool in respect of all branches and disciplines. The respondents contend that the language of Rule 17 of the Reservation Rules gives discretion to the Board to apply the said Rule keeping in view the fact that meritorious candidates should not be put to hardship. It has also been contended that Note-2 to Rule 17 gives jurisdiction to the Counselling Authority to address any unforeseen situation arising during application of Rule 17 in such a manner so as to avoid any hardship to a meritorious candidate.

10) Lastly, the respondents have contended that whole admission process of NEET-PG is a timebound process regulated by National Medical Council of India and Medical Counselling Committee. As per the prescribed time schedule, the admission process has to be completed upto 20th October, 2023 and beyond that it would not be possible for J&K BOPEE to allot any seat to any candidate. Besides

this, it has been contended that by now all the candidates who have been selected have joined their respective colleges, therefore, if any order is passed in favour of the petitioners, that is going to effect the selected candidates who are not even parties to these proceedings.

11) The respondents have filed a supplementary affidavit in which it has been submitted that petitioners No.1 and 3 to 8 have already joined the colleges and disciplines that were allocated to them whereas petitioner No.2 has resigned and has rendered himself ineligible for further rounds of counselling. Regarding petitioner No.9, it has been submitted that he has attended three rounds of counselling but he did not get the seat because his choices were not available at his turn. Regarding petitioner No.10, it has been submitted that in the second round of counselling, he was allocated the discipline of Pathology in SKIMS, Srinagar, but he did not join. Regarding petitioner No.11 and 12, it has been submitted that in the first round, they did not get the disciplines of their choice and thereafter they did not attend the subsequent rounds of counselling.

12) I have heard learned counsel for parties and perused record of the case.

13) So far as the factual aspects of the matter are concerned, there is no dispute regarding the same. Petitioners No.1 to 3, who happen to be the most meritorious candidates of sports category, have made it to the open merit category. Similarly, petitioners No.4 to 8, though not

most meritorious candidates of RBA category, have secured higher rank than those candidates belonging to other reserved categories like OSC, ST, ALC, ALC-IB and SC who have been allocated the disciplines to which the aforesaid petitioners have lodged their claim. It is also not in dispute that petitioners No.9. to 12 have not been allocated any seat and that they have secured higher UT rank than the rank secured by those candidates belonging to other reserved categories like PSP, ALC, ALC-IB and SC who have been selected in the disciplines regarding which petitioners No.9 to 12 are lodging their claim.

14) The bone of contention in this case is the manner in which Rule 17 of the Reservation Rules is required to be applied. For understanding the issue, Rule 17 is required to be noticed. It reads as under:

“17. Allotment of Discipline etc. A reserved category candidates, if selected against the open merit set may be considered for allotment of discipline/stream/ college allocable to him in his respective category on the basis of his merit and preference. The leftover discipline/stream/college in the open merit category shall be allotted to the reserved category candidates who get selected consequent upon the reserved category candidate getting selected in the open merit category.

Explanation: The leftover discipline/stream/ college shall mean such number of disciplines/ streams/ colleges becoming available after allotment of seat to the last OM candidate as allocable under rules;

Provided that in respect of under graduate courses the leftover seats/colleges shall be added to such categories where shortfall has taken place due to

application of Rule 17 and allotment shall be made in terms of Rule 13 on the basis merit cum preference from the respective categories.

Provided further that in respect of PG Course the leftover discipline/stream/colleges shall be added to the pool of reserved category candidates in terms of Rule-15 and allotted on the basis merit cum preference. Provided also that Rule-17 shall be applicable only during the first round of counselling both in respect of UG and PG courses, Unfilled seats due to non-joining, resignation etc. during the first round of counselling shall be filled up from amongst the eligible candidates from the respective categories where a seat has become available i.e. seat left by the SC candidate in the first round shall be allotted to the candidates from the SC category during the second round of counselling only etc. so that the quota allocable to different categories is maintained. The unfilled category seats, if any, shall be filled up from OM candidates in accordance with Section 9 of the Jammu and Kashmir Reservation Act, 2004.

Note:1: *In case the last OM candidate belongs to any reserved category, but Rule 17 cannot be applied in his case, he shall be considered first in OM and allotted a discipline/stream/college of his choice/preference, if available. However, in case discipline/stream/college of his choice/preference is not available in the OM, he may be considered for allotment of discipline/ stream/college in his respective category on the basis of merit cum preference in accordance with Rule 13 or 15 as may be applicable in his case.*

Note 2: *The prescribed Counselling Authority may, for the reasons to be recorded, address any other unforeseen situation arising during application of Rule 17 in such a manner that it does not put any meritorious category candidate to hardship viz-a-viz preference for allotment of discipline/stream/ college as the case may be.*

15) The afore-quoted Rule in its earlier form i.e., prior to its amendment vide SRO 165 of 2019 dated 08.03.2019 has been interpreted by this Court in the case of **Mehdi Ali and Ors. vs. State**

and Ors., AIR 2019 J&K 91. In the context of the instant case, it would be apt to refer to paras 34, 36, 37, 38 and 39 of the judgment.

The same are reproduced as under:

34. *Rule 17, which is subject matter of controversy in these petitions, deals with a situation where some candidates belonging to reserved category/categories qualifying for higher ranking on the basis of their own merit and depending on their performance in the Common Entrance Test, are placed in the general merit list. Such candidate when go to occupy the general category seat is not counted against the quota reserved for reserved category. He is treated as a general category candidate and the seat fallen vacant goes to a candidate belonging to its category who is next in the order of merit to the candidate last selected in such category. This way the aggregate reservation provided for reserved category does not exceed. Rule 17 provides that a meritorious reserved candidate („MRC“ for brevity) who chooses to avail of the option of admission in a particular stream kept for reserved category is deemed to have been admitted as an open merit category candidate. He continues to be an open merit category candidate for the purpose of counting the quota for reserved category. For example, if 10 MRCs on the strength of their merit shift to the general merit category, they will create space for 10 more candidates who are next in the order of merit to the last candidate selected under such category. This way, the percentage is maintained. If the MRC, who shifts to the general merit category, does not accept the stream/discipline that would be allotted to him by treating him as a general category candidate then, by operation of Rule 17, he would have option for admission to the stream of his choice kept reserved for the reserved category. The provision, in essence, is intended to achieve the objective that the MRC is not put to any disadvantageous position vis-à-vis candidate of his category with the lesser merit. In other words, the reserved category candidate is held entitled to admission on the basis of his merit and he will have the option of taking admission to the stream kept reserved for the reserved category. For the*

purpose of computing the percentage of reservation, such MRC would be deemed to have been admitted to a general merit category and would not eat away the quota earmarked for reserved category. This is how, Rule 17 operates. So far so good, there is no difficulty with regard to the procedure prescribed in Rule 17 as the same only gives effect to the law laid down by the Supreme Court in the cases of Ritesh R. Shah vs Dr. Y.L. Yamul, 1996 (3) SCC 253 and Anurag Patel vs UP Public Service Commission, 2005 (9) SCC 742. However, in terms of Rule 17 as it stood prior to amendment which was followed by the respondents for several years, the resultant disciplines/ streams/colleges in the open merit category which would become available on MRC making his choice of discipline allocable to him in the reserved category as per his merit, would go to the reserved category candidate getting selected consequent upon MRC shifting to the open merit category. This Rule was being operated by the State without there being any challenge from any aggrieved candidate.

36. *The short point raised by the petitioners, which calls for determination in these writ petitions is, as to whether this amendment has affected any right of the petitioners and, therefore, unsustainable in law. The right of a category candidate to seek reservation has been dealt with in detail hereinabove. The argument of Mr. Sethi, learned Senior Counsel appearing for the petitioners that operation of Rule 17 in the manner now provided after the amendment acts to the serious prejudice of the petitioners and confers undue advantage on the general category candidates is without any basis and, therefore, cannot be accepted. The Rule recognizes the right of meritorious reserved category candidate, who on the strength of his merit comes in the open merit, still makes an option of discipline/stream/college of his choice as per his status as reserved category candidate. He would not count a seat of the reserved category, but would occupy one seat in the open merit. This would not disturb the percentage of reservation provided for the general category and the reserved categories in any manner. However, the seats in post graduate medical courses cannot be separated from the*

streams. The seat and stream are, therefore, integrated and completely inseparable. However, for the purpose of giving effect to the law laid down by the Supreme Court in the cases of Ritesh R. Shah and Anurag Patel (supra) and other judgments and to ensure that reservation does not act to the disadvantage of MRC, there is notional separation of the seats from the streams. The MRC, who finds place in the general category list on the strength of his own merit, occupies the seat in the general category, but for the purpose of choice of discipline, he may fall back upon his reserved category status and claim the discipline which is allocable to him being a member of the reserved category. Although, in terms of Rule 15, there is a distribution of the streams amongst the general category and the different reserved categories, yet, for the purpose of effectuating the object of Rule 17, the reserved categories are treated as a single class for the allotment of streams. This is so provided unequivocally in Rule 15.

37. *Now the question arises as to how to utilize the stream which becomes available in the general category on account of MRC not opting for it. As per un-amended Rule 17, it would go to a candidate in the reserved category who would come up in the select list on account of shifting of MRC to the general category. This would go to the candidate with the inferior merit even in reserved category. This was not only acting disadvantageous to the general category candidates, but was equally disadvantageous to the candidates of his category being better merit. For example, the discipline of General Surgery in the open merit becomes available on account of MRC not opting for it, but opting for a discipline available in his category. The discipline of General Surgery under the un-amended Rule 17 would straightway go to the last selected candidate in the reserved category who would come consequent upon moving of the MRC to the open category. The better meritorious candidate in the reserved categories who might have got the non-clinical discipline or PG Diploma course did not have the option to claim the aforesaid resultant discipline/stream. This was clearly an anomalous situation created by Rule 17 as it stood prior to*

amendment. As stated by the respondents in the reply and is otherwise apparent that the Government, with a view to remove that anomaly and to ensure that the merit of a candidate whether it is a general category candidate or reserved category candidate does not operate to his prejudice, a need was felt to suitably amend Rule 17. This is how SRO 49 of 2018 impugned in these petitions came to be issued.

38. *As per the amended provision, the stream/discipline which becomes available consequent upon the MRC not opting for these disciplines are being now put in a pool of general category candidates as well as the reserved category candidates and are allocated on the principle of merit cum choice. Now these disciplines which so become available have the "trickle down effect" and in the process, the principle of merit cum choice is honored irrespective of status of the candidate. I do not see any illegality or unconstitutionality in the said provision.*

39. *Before I close, I would like to give an example to elucidate the mechanism on which Rule 17 operates. Let us assume that there are five seats of MD Radiotherapy in the GMC Jammu. As per distribution provided under Rule 15, the effective reservation would be four in the open merit and one for the pool of categories. If a candidate belonging to reserved category obtains merit equal to or higher than the last in the open category, by operation of law, he shifts to the open merit. As per his merit, he gets the MS Anatomy from the pool of open merit which is not a stream of his liking and, therefore, in terms of Rule 17, he falls back upon his merit in his reserved category and on the basis of his inter see merit in the pool of reserved categories, he gets the discipline of MD Radiotherapy. He utilizes the only available discipline of Radiotherapy which was meant for pool of the reserved category, but does not eat away the seat fallen to the share of reserved category. In this process, there is neither any change in the percentage of reservation provided for the reserved categories nor there is decrease of any discipline or stream earmarked for reserved categories. The discipline of MD Radiotherapy which was meant for the reserved*

category candidates continues to remain with the reserved category candidate and shifting of such candidate to the general category on the strength of his merit notwithstanding. This is how the process needs to be appreciated. This is so far as the streams available in the pool of reserved category is concerned, but what would happen to the stream in the general category. The MRC who shifts to the open merit category would, as a matter of right, be entitled to make option for the stream available in the general category as well. He does not make such option for the reason that it is not a discipline of his choice. Consequently, this discipline becomes available. As per the amended Rule 17, this discipline and like this, if more seats in available disciplines also become available, it constitutes a pool of leftover seats/streams. Un-amended Rule provided that these seats becoming available should go to those candidates of the reserved categories who will come up in the select list consequent upon shifting of the MRCs to the open merit, whereas after the amendment, this would be available to all the selected candidates on the basis of their merit irrespective of whether they are general category or reserved category candidates. This is what I have termed as "Trickle down effect". This promotes merit and brings certainty and un-ambiguity in Rule 17. The State, as a matter of policy decision, has decided to deviate from the earlier procedure which was not only ambiguous but anomalous. The principle underlining Rule 17 has been well explained in the cases of Ritesh R. Shah, Anurag Patel (supra) and recently, in the case of "Tripurari Sharan and another Vs. Ranjit Kumar Yadav and others" (2018)2 SCC 656. In the case of Tripurari Sharan's case, the Supreme Court was considering the legality of the Full Bench decision of the Patna High Court rendered in the case of "The Controller Of Exam., Bihar vs Nidhi Sinha & Anr", AIR 2017 Pat 1". The High Court of Patna in the said case had answered the reference which is noted by the Supreme Court in para No.3 and for facility of reference, is reproduced hereunder:

"It was contended before the Patna High Court by the appellants that the seat which remained unfilled because of migration/

shifting of a MRC to the reserved category should be filled up by the candidates from the general category list inasmuch as the MRC virtually shifts himself to the reserved category. Per contra it was contended by the contesting respondents that such seat should continue to be filled up by the ousted candidates at the bottom of the reserved category list, in view of the fact that the MRC continues to be a general category candidate. By the impugned judgment, the Patna High Court answered the reference in favour of the respondents as under:

17. In view of the discussions above and what has been held by Supreme Court in cases of Ramesh Ram (supra) and Ritesh R. Sah (supra) we arrive at the following conclusion(s) :-

(i) There is an obvious distinction between qualifying through a common entrance test for securing admission to medical courses in various institutions vis-a-vis a common competitive examination held for filling up vacancies in various services.

(ii) This distinction arises because all candidates receive, in a case of common entrance test held for securing admission in medical institutions, the same benefits of securing admission in one of the medical institutions, in a particular course, whereas in the case common selection process adopted for filling up vacancies in various services, there are variations, which accrue to the successful candidates, because the services may differ in terms of status and conditions of service including pay scale, promotional avenues, etc. Consequence of migration of an MRC to the concerned reserved category shall be, therefore, different in case of the admission to various medical institutions vis-a- vis selection to various posts.

(iii) In case of admission to medical institutions, an MRC can have in, for the purpose of allotment of institutions, of his choice, the option of taking admission in a

college, where a seat in his category is reserved. Though admitted against a reserved seat, for the purpose of computation of percentage of reservation, he will be deemed to have admitted as an open category candidate, rather he remains an MRC. He cannot be treated to have occupied a seat reserved for the category of reservation he belongs to. Resultantly, this movement will not lead to ouster of the reserved candidate at the bottom on the list of that reserved category. While his/her selection as reserved category candidate shall remain intact, he/she will have to adjusted against remaining seats, because of movement of an MRC against reserved seats, only for the purpose of allotment of seats.

(iv) In the case of filling up of posts based on common competitive selection process in different services, situation will be entirely different, when an MRC opts to move to the reserved category, which he belongs to, for getting a service/post of his choice. In such a situation, the candidate, at the bottom of list of the concerned category, will have to move out and the slot, in the general merit list, will stand vacated, because of migration of the MRC will have to be filled up from general merit list. Otherwise, if the open seats are allowed to be filled up by candidates of reserved categories, it will result into extending the benefit of reservation beyond fifty percent, which is constitutionally impermissible”.

16) After amendment of Rule 17 vide SRO 165 of 2019 dated 08.03.2019, it again became a subject matter of discussion before this Court in the case of **Dr. Bhat Ab. Ubran Bin Aftab and Others Vs. UT of J&K and others** (WP(C) No. 2020/2021 decided on 27.06.2022). The Court, after taking notice of the discussion of the un-amended Rule 17 in **Mehdi Ali's** case (supra) and after noticing the amended

provision of aforesaid Rule 17, explained the said Rule in the following manner:

15. *As stated above, there is no substantial change insofar as essential part of Rule 17 is concerned. From reading of Rule 17, it is abundantly clear that a reserved category candidate, if selected against Open Merit seat (also known as MRC), is entitled to be considered for allotment of discipline/stream/ College allocable to him in his respective category on the basis of his merit cum preference. The leftover discipline/stream/ College in the Open Merit category shall be allotted to the reserved category candidate, who gets selected consequent upon MRC getting selected in Open Merit. The explanation appended to Rule 17 explains the term 'leftover discipline/stream/College' and it means such number of discipline/stream/ Colleges that would become available after allotment of seat to the last Open Merit candidate as allocable under Rules. By having reference to Rule 15, the 2nd proviso to Rule 17 further provides that in respect of PG Courses, the leftover disciplines/ streams/ Colleges shall be added to the pool of reserved category candidates in terms of Rule 15 and allotted on the basis of merit-cum-preference. Note (1) of Rule 17 makes the position further clear by providing that in case the last open candidate belongs to any reserved category, i.e., if the last candidate in the Open Merit is MRC, Rule 17 will have no application. He shall be considered first in the Open Category and allotted the discipline/ stream/ College of his choice/preference if available. It is only in case Discipline/Stream/College of his choice/preference is not available in the Open Merit category, he may be considered for allotment of Discipline/Stream/College in his respective category on the basis of merit/preference in accordance with Rule 15 of the Rules.*

17) From the foregoing analysis of the legal position as regards the interpretation of Rule 17 of the Reservation Rules 2005, it is clear that

the aforesaid Rule has been incorporated in order to safeguard the

interests of a reserved category candidate who by virtue of his merit has made it to the open merit category. The object of the said Rule is to avoid a situation where meritorious reserved category candidate would be put to a disadvantageous position vis-à-vis a reserved category candidate in the matter of choice of discipline/stream/college. To avoid such a situation, an MRC candidate after taking up a seat from the open merit category is entitled to allocation of a discipline/stream/college from the reserved category if his choice of discipline/stream/college is not available in the open merit category. The Rule further provides that the leftover discipline/stream/college in the open merit category shall thereafter be allocated to the reserved category candidate who would get selected consequent upon the reserved category candidate having been selected in open merit category.

18) As has been explained in **Mehdi Ali's** case (supra), the MRC who shifts to open merit category would be entitled to make option for the stream available in general category as well. It has been also explained that the leftover seats/streams would be available to all the selected candidates on the basis of their merit irrespective of whether they are general category or reserved category candidates and these leftover seats have to be allocated on the basis of merit-cum-preference.

19) Rule 15 of the Reservation Rules makes it clear that selection of candidates from reserved categories for different streams has to be

made strictly on the basis of their *inter se* merit treating them as a single class for the purpose of allotment of streams. The said Rule bears reference to second proviso to Rule 17 also. As per second proviso to Rule 17, in respect of PG courses, the leftover streams/disciplines/colleges have to be added to the pool of the candidates in terms of Rule 15 and allocated on the basis of merit-cum-preference meaning thereby that leftover streams/disciplines/colleges after adding the same to the pool of reserved category candidates have to be treated as a single class for the purpose of allotment of streams and the same have to be allocated strictly on the basis of *inter se* merit-cum-preference.

20) In the face of aforesaid legal position, the contention of the respondents that Rule 17 of the Reservation Rules has to be made applicable to the extent of streams available in respect of a particular reserved category, is contrary to the legal position emanating from a conjoint reading of Rule 17 and Rule 15 of the Reservation Rules as explained by this Court in the cases of **Mehdi Ali** and **Dr. Bhat Ab. Ubran Bin Aftab and Others** (supra). The respondents could not have restricted applicability of Rule 17 to the number of seats/disciplines earmarked for a particular reserved category, as has been done by them in the instant case. The respondents have justified their action on the ground that on the basis of opinion tendered by the Department of Law, Justice and Parliamentary Affairs, the benefit of Rule 17 has to be extended to meritorious candidates of EWS category as well and because the seats

earmarked for EWS category are not available in all the institutions, as such, applicability of Rule 17 of the Reservation Rules in the manner it was done in the previous past was causing imbalance and confusion. It has been contended that the respondent Board has discretion to apply Rule 17 in a manner so as to avoid hardship to a meritorious category candidate and thus the Board was well within its jurisdiction to restrict the applicability of Rule 17 to the number of seats reserved for that particular category.

21) The logic projected by the respondents for deviating in applicability of Rule 17 of the Reservation Rules does not appear to be sound for the reason that on ground it has resulted in hardship to meritorious category candidates, inasmuch as the petitioners are definitely more meritorious than those category candidates who have been allocated disciplines/seats regarding which the petitioners had given their preference. What the respondent Counselling Authority seems to have done is that it has compartmentalized the disciplines allocated to reserved category seats and thereafter given the benefit of Rule 17 to the extent of number of candidates equivalent to the number of seats reserved to that particular reserved category. This runs contrary to Rule 17 read with Explanation to the said Rule which provides for creation of a pool of leftover streams/disciplines. This gets further clarified when we read Rule 17 in conjunction with Rule 15 which provides for treatment of all reserved categories as a single class. The respondents by adopting a novel method of applying Rule 17 have instead of avoiding hardship to meritorious candidates caused

prejudice to not only MRC's but also to reserved Category candidates having better merit.

22) Apart from the above, if we have a look at Rule 15 of the Reservation Rules the distribution of seats laid down in the said Rule has been detailed in the following manner:

(i)	Open Merit Category	57%
(ii)	Reserved Categories:	
	(a) Scheduled Caste	8%
	(b) Scheduled Tribe	10%
	(c) Socially and Educationally Backward Classes	
	(i) Residents of Backward Areas	10%
	(ii) Residents of Area Adjoining Actual Line of Control /International Border	4%
	(iii) Weak and Under Privileged Classes (Social Caste)	4%
	(iv) Pahari Speaking People	4%
	(d) Children of Defence Personnel/Para-military Forces and State Police Personnel	2%
	(e) Candidates possessing outstanding Proficiency in Sports	1%
	(f) Economically Weaker Sections (EWSs)	10%

23) From a perusal of the aforesaid details of percentages earmarked for each category, it is clear that a total of 43% of seats have been earmarked for reserved categories (a) to (e), for open merit category, 57% of the seats have been earmarked and for EWS category 10% of the seats have been earmarked, meaning thereby that 10% of seats earmarked for EWS category is part of 57% of seats earmarked for open merit category and it is not part of 43% of seats earmarked for other reserved category candidates. It is for this reason that the first proviso to Rule 15 lays down that the benefit under EWS category would be only in respect of those institutions where the intake capacity has been increased over and above its annual permitted strength in

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each branch of study and faculty by the competent authority. Even if benefit of Rule 17 is extended to MRCs of EWS category also, the same would not cause any difficulty or imbalance. An MRC of EWS category could be granted discipline of his choice from the reserved category pool if his choice is not available in the open merit and thereafter the seat/discipline earmarked for EWS category would contribute to the general pool of reserved category candidates.

24) In any case the respondents have not illustrated even a single instance in their affidavit to show that application of Rule 17 of the Reservation Rules in the case of MRCs of EWS category has resulted in imbalance or anomalous situation. Without bringing any such instance to the notice of this Court, it can safely be stated that the respondents have violated the spirit of Rule 17 read with Rule 15 of the Reservation Rules, as has been interpreted by this Court in the cases of **Mehdi Ali** and **Dr. Bhat Ab. Ubran Bin Aftab and Others** (supra). The course adopted by the respondents has resulted in allocation of preferred disciplines of more meritorious candidates from reserved categories of Sports and RBA to less meritorious candidates of other reserved categories. It is true that Rule 17 could not have been applied in case of the petitioner Nos. 4 to 12 as they were not MRC's, but even in their case the respondents were obliged to adhere to the mandate of Rule 15 which they have failed to do by not treating all the reserved categories as a single class while allocating the disciplines to the candidates of reserved categories. This has resulted in a situation where a less meritorious

candidate of a particular reserved category has been preferred to a more meritorious candidate of another reserved category which is not the spirit of Rule 15 of the Reservation Rules. For these reasons, the action of the respondents in denying the preferred disciplines to petitioners No.1 to 8 and in denying seats to petitioners No.9 to 12 is not sustainable in law.

25) The next question that arises for determination is as to what relief can be granted to the petitioners having regard to the fact that whole admission process has come to an end on 20th October, 2023. The Supreme Court in the case of **S. Krishna Sradha v. State of A.P and ors, (2020) 17 SCC 465**, has dealt with the aforesaid aspect of the matter and laid down the following guidelines:

13. *In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:*

13.1. *That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.*

13.2. *Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and*

equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cutoff date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. *In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated*

in the next academic year out of the seats allotted in the management quota.

13.4. *Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.*

13.5. *It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.*

26) Although the aforesaid guidelines were issued by the Supreme Court in the context of NEET-UG courses yet in the later judgment of the Supreme Court in the case of **National Medical Commission vs. Mothukuru Sriyah Koumudi & Ors.** (Civil Appeal No.3940 of 2020 decided on December 07, 2020), it has been held that the principles can be applied even in the case of selection in NEET-PG courses as well.

27) In the light of the aforesaid principles, let us now consider the cases of the petitioners individually having regard to the developments that have taken place during the pendency of the instant writ petition. Petitioners No.1 and 3 to 8 have joined the disciplines that were allocated to them whereas petitioner No.2 has resigned after joining. Therefore, no relief can be granted in favour of these petitioners because they have joined and are pursuing their courses in the disciplines that have been allocated to them. This is so because extending directions to the respondents to allocate seats in the

disciplines of their choice in the next session would prompt these petitioners to leave the allotted seats which in turn would result in wastage of the said seats because the admission process has already closed. Petitioner No.2 is stated to have resigned after joining, therefore, his status regarding eligibility for admission in the next session has become a debatable issue.

28) So far as petitioners No.9 to 12 are concerned, only petitioner No.10 has been allocated the discipline of MD Pathology in SKIMS, Srinagar, in the second round of counselling but he has not joined whereas petitioners No.9, 11 and 12 have not been allocated any seat because they did not get the preferred discipline during the counselling process. All these petitioners i.e., petitioners No.9 to 12 have approached this Court at the earliest i.e., on 24th August, 2023, immediately after the issuance of impugned provisional selection list dated 20th August, 2023. The selection process has concluded on 20th October, 2023, but unfortunately the writ petition could not be disposed of before the said date, therefore, no fault can be attributed to these petitioners. As has already been stated, all the petitioners including petitioners No.9 to 12 have been denied a seat of their preferred discipline by erroneous application of Rules 15 and 17 of the Reservation Rules which has resulted in denial of seats to these petitioners and allocation of the same to candidates belonging to other reserved categories who, admittedly, were having lesser merit. It is also not in dispute that petitioners No.9 to 12, who belong to RBA

category, are having higher merit than the candidates who have been selected in RBA category, though in different disciplines. Therefore, in order to undue wrong done to them, it is directed as under:

(I) Petitioner No.9 is held entitled to admission in MS Ortho in GMC, Srinagar, petitioner No.10 is held entitled to admission in MD Psychiatry in SKIMS, Srinagar, petitioner No.11 is held entitled to admission in MS General Surgery in GMC, Jammu and petitioner No.12 is held entitled to admission in MS Orthopedics in GMC, Jammu.

(II) The respondents are directed to keep one seat each in the aforesaid disciplines in the aforesaid institutions reserve in the next session and the petitioners No.9 to 12 shall be entitled to admission against these seats/disciplines in accordance with their entitlement determined hereinbefore. The respondent-Board shall not put the aforesaid seats/disciplines for selection for admission to PG Course, 2024.

(III) Additionally, the respondents shall pay compensation in the amount of Rs 2.00 lacs (rupees two lacs) to each of the petitioner Nos. 9

to 12 for having denied to these petitioners their
rightful claims.

29) The petition shall stand disposed of in above terms.

(Sanjay Dhar)
Judge

SRINAGAR
08.11.2023
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

