

**HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR**

OWP No.829/2016  
CMP No.01/2016

Date of Decision: 30.05.2016

Owais Nazir Qanoongo

Vs.

State of J&K & ors.

Coram:-

*Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge*

Appearing counsel:-

For the Petitioner(s): Mr. Javaid Iqbal

For the Respondent(s): Mr. Azhar-ul-Amin-for R2 to R4.  
None for R1 & R5 to R7.

- |     |  |                        |
|-----|--|------------------------|
| i)  | Whether to be reported<br>in Digest/Journal: | <b>YES/NO</b>          |
| ii) | Whether to be reported<br>in Press/Media:    | <b>YES/NO/OPTIONAL</b> |

**1.** J&K Board of Professional Entrance Examinations (hereinafter referred to as the Board), vide notification No.199-BOPEE of 2015 dated 17.12.2015, invited applications from the candidates interested in appearing in the Entrance Test for admission to MD/MS/PG Diploma Courses-2016 in the Government Medical Colleges of Srinagar and Jammu, SKIMS-Srinagar and ASCOMS-Jammu and MDS Courses-2016 in the Govt. Dental College, Srinagar. Admittedly, petitioner has also applied under the category 'Sports' (SP) possessing outstanding proficiency in sports. He got selected provisionally for PG diploma Ophthalmology in GMC, Srinagar, as having ranked 0334.

**2.** The grievance, as projected by the petitioner, is that in view of his rank he is entitled to be selected for MS Surgery. Supporting this contention he has highlighted that some of the candidates belonging to reserved categories are inferior in rank to him but they have been admitted to MD/MS courses. In essence, contention is that vis-a-vis allocation of seats to the categories, all the categories constitute one class, therefore, irrespective of the merit in their respective categories, the candidates are to be allotted the course in order of their merit as a class. In short, submission is that the list of all the candidates of the categories was to be prepared in order of merit for being allocated courses/seats. In case same would have been done, the petitioner, being superior in rank to various other candidates of the categories, would get admission to MS Surgery.

**3.** According to learned counsel for the petitioner, Rule 15 of the J&K Reservation Rules, 2005 (for short Rules of 2005), provides that the selection of the candidates from the reserved categories for different streams shall be made strictly on the basis of their *inter se* merit treating them as a single class for purposes of allotment of streams. The

BOPEE, in view of the scheme of Rule 15 of the Rules of 2005, has allocated the seats to the categories in order of merit in their respective categories. The share of the SP category has been shown as 04 i.e. 03 for MD/MS Courses and 01 for PG Diploma. 03 seats of MD/MS have been given to three candidates belonging to SP category in order of their merit whereas the petitioner, in the said category, in order of merit figure at serial No.4, so has been allotted the discipline of PG Diploma Ophthalmology. Contention is that at the level of MD/MS course, merit and merit alone vis-a-vis seats allotted to categories as a class has to prevail. In support of these contentions, learned counsel placed reliance on the judgments (1984) 3 SCC 654, (1999) 7 SCC 120 and (2012) 7 SCC 389.

**4.** Learned counsel for the Board submitted that the Board has acted strictly in accordance with Rule 15 of the Rules of 2005, which Rule, as a whole, has to be read together. All categories, in terms of the said Rule, are shown as to what percentage of seats they shall be entitled to respectively and in case merit of all the categories together is to be taken as parameter for selection then some of the reserved categories may get unrepresented. The object of

representation to the categories respectively to the extent of percentage reserved for them will get negated. Learned counsel further submitted that merit is a hallmark, same has to be adhered to vis-a-vis both open merit as well as reserved categories respectively to the extent of their share.

**5.** The question for determination, in essence is as to whether for the seats allotted to the reserved categories a single merit list is to be prepared and then streams are to be allotted in the order of general merit list so prepared. The answer has to be in negative because if that is allowed, same will destroy the very object of reservation to the reserved classes/categories. Supposing a general merit list of the categories for their total seats is prepared, if only candidates from one reserved category secure the maximum merit then in that eventuality only one category will get the entire representation to the exclusion of other categories, which, apparently, can't be the object. Merit and merit alone must prevail but in the scheme of reservations, merit of the reserved categories is not to be compared with the merit of open merit candidates otherwise merit of the categories sometime is much lower than the merit of the open

merit candidates but some of the candidates in open merit category even having superior merit as compared to the candidates belonging to the reserved categories get excluded. Similarly, it operates within the respective categories. That is how the categories are meant to be given the respective representation.

6. Rule 15 of the Rules of 2005, for facility of reference, is relevant to be quoted:

15. Distribution of seats

For the post-graduate courses in MD/MS/M.Tech, Engineering and Agricultural Sciences and similar other postgraduate course, the seats shall be distributed as follows with the condition that the selection of candidates from the reserved categories for different streams shall be made strictly on the basis of their inter-se merit, treating them as a single class for purpose of allotment of streams:-

(i)	<b>Open Merit Category</b>	65%
(ii)	Reserved Categories:	
	(a)Scheduled Caste	4%
	(b)Scheduled Tribe	5%
	(c)Socially and Educationally Backward Classes:	
	(i) Residents of Backward Areas	10%
	(ii)Residents of Area Adjoining Actual Line of Control	2%
	(iii)Weak and Under Privileged Classes (Social Castes)	1%
	(d)Children of Defence Personnel/Para-military Forces and State Police Personnel	2%
	(e)Candidates possessing Outstanding Proficiency in Sports	1%

Explanation:- The Rural Service means service rendered in the areas at least 20 kms away from Municipal limits from the shortest possible route."

The wording employed that "with the condition that the selection of candidates from the reserved categories for different streams shall be made strictly on the basis of their inter-se merit, treating them as a single class for purposes of allotment of streams", is projected to mean that there shall be one list prepared in order of merit for all the seats allotted to all the reserved categories but that can't be the correct position. The Rule has to be read as a whole and purposively interpreted so as to advance the object of reservations. All reserved categories have respective share as indicated in the Rule itself. It can be interpreted to mean that every category has its own share within its own category and the allotment of seats/streams shall be according to the inter-se merit in the respective categories. That is what has been done in case of the petitioner. The category of SP has been allotted 04 seats as its share and in accordance with inter-se merit of the candidates of that category streams have been allotted. Petitioner, admittedly, within his category being at 4<sup>th</sup> position, has been allotted the relevant stream. This is how merit of the

candidates inter-se within their category to the extent of their share has been given effect to.

**7.** The Board, in its reply, has clearly stated that this year total number of seats conveyed by the authorities of different Government Medical Colleges for admission to MD/MS/PGD was 288 for MD/MS and 53 for Diploma, out of which 65% seats were earmarked for Open Merit Category (187 MD/MS seats and 34 Diploma seats) and the remaining 35% seats (101 for MD/MS and 19 for Diploma) were earmarked for all other reserved categories as per the fixed seat percentage. Then all the reserved category candidates were treated as a single class for purposes of allotment of streams. It is further stated in the reply that by applying Rule 15, the total number of seats to be allotted to Sports category would come of 2.8(3) seats for MD/MS and 0.53(1) seat for PGD, as such, seats have been allotted as per rank in the respective category.

In the reply, it is further stated that the admixture of the reserved category seats has been awarded to the candidates as per their rank. The basic seat share of different reserve category

candidates has been allotted as per their rank. 03 PG seats were allotted to 03 candidates possessing outstanding proficiency in sports as only 1% of the total number of the seats were allotted to such candidates and one seat of PGD was also allotted to the candidate (petitioner). Since the petitioner stood 4<sup>th</sup> amongst the candidates of his reserved category (sports person), so as per his rank was allotted the same.

**8.** On careful scrutiny of the rule position and the method adopted by the Board in keeping with the spirit of the Reservation Act and the Rules, no fault can be found with the same.

**9.** The inter-se merit of the candidates within their categories is stated to have been maintained. There is no quarrel on the fact that the petitioner stood 4<sup>th</sup> in order of merit in his respective category (SP). Out of four seats, three PG seats have been allotted to three candidates in order of merit, which merit position is not disputed. Petitioner being at 4<sup>th</sup> position in merit, so one seat of PG Diploma has been allotted to him. He cannot claim jump in to other category by claiming that he has superior merit than the candidates belonging to other



categories. Said position is permissible only when any of the candidates amongst the respective categories has superior merit than the last candidate selected in open merit category but not vice versa. In absence of any challenge to Rule 15 of the Rules of 2005, said Rule has to be implemented as is being implemented in its real spirit. If merit and only merit will be the criteria for admission to MD/MS/PG Diploma and MDS Courses as is projected by the Id. Counsel for the petitioner, then there is every chance that the categories, who are being treated separately in respect of merit as compared to open merit candidates, may get totally excluded, as a result whereof object of the reservation will get negated. Same in presence of the subsisting law, Reservation Act and Reservation Rules, shall not be permissible. Therefore, judgments relied on are not helpful to the petitioner.

**10.** In the final analyses, for the reasons and law stated hereinabove, the only conclusion is that the petitioner has been properly treated and allotted stream according to his merit in his respective category (SP). No interference is warranted. Petition is found to be devoid of merit, as such, dismissed

along with connected CMP. Interim direction dated 17.05.2016, where-under one seat of MS General Surgery was directed not to be allotted, shall cease to be in operation.

**(Mohammad Yaqoob Mir)**  
**Judge**

Srinagar  
30.05.2016  
**"Mohammad Altaf"**

Pronounced today on 30.05.016 in terms of  
Rule 138(3) of the J&K High Court Rules, 1999.

30.05.2016 (Ali Mohammad Magrey)  
Judge