

TRIPURARI SHARAN AND ANR.

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v.

RANJIT KUMAR YADAV & ORS.

(Civil Appeal No. 157 of 2018)

JANUARY 11, 2018

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[ARUN MISHRA AND
MOHAN M. SHANTANAGOUDAR, JJ.]

Education/Educational Institutions – Admission to medical courses – Procedure to be followed in case of a Meritorious Reserved Candidate (MRC) and allotment of seat in college – The reserved category candidate is entitled to admission on the basis of his merit and he will have the option of taking admission to the colleges where a specified number of seats are kept reserved for the reserved category – However, while computing the percentage of reservation, he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate – In this manner, the number of seats in each category remains constant and the upper limit of 50% reservation is not breached.

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Dismissing the appeals, the Court

HELD: 1. Often, in a competitive examination held for the purpose of admission in technical and medical institutions etc. some candidates belonging to reserved category/categories, qualify for the 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 class of candidates belonging to reserved categories who qualify on their own merit, to be placed in general merit list, are described as Meritorious Reserved Candidate (MRC). A MRC who goes on to occupy a general category seat is not counted against the quota reserved for a reserved category candidates, but is treated as an open competition candidate or general merit candidate. [Para 7][177-D-E]

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Indra Sawhney v. Union of India (1992) Suppl. 3 SCC 217 : [1992] 2 Suppl. SCR 454; R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745 : [1995] 2 SCR 35 – referred to.

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A **2. Two questions arise for consideration: i. Whether a MRC can opt for a seat earmarked for reserved category? If answer is yes; what happens to the 50th seat which was to be allotted to MRC (i.e. 50th general merit candidate) had he opted for a seat meant for the reserved category to which he belongs? In the matter on hand, it is not the case that any other candidate of the reserved category, other than the candidate taking up the MRC's general category place in choosing general category seat, will be adjusted. A MRC in medical admissions has more marks than the last general merit candidate, hence he shall be treated as a general category candidate. Only a choice of college seats in the reserved category is open to him. In this manner, the number of seats in each category remains constant and the upper limit of 50% reservation is not breached.[Paras 7, 12 and 13][178-F; 187-E, G]**

D *Shri Ritesh R. Sah v. Dr. Y.L. Yamul* (1996) 3 SCC 253 : [1996] 2 SCR 695 – relied on

Union of India v. Ramesh Ram & Ors. (2010) 7 SCC 234: [2010] 6 SCR 698; *State of Bihar v. M. Neethi Chandra* (1996) 6 SCC 36 : [1996] 5 Suppl. SCR 696 – held inapplicable.

E *Alok Kumar Pandit v. State of Assam & Ors.* 2012 (13) SCC 516 : [2012] 11 SCR 87; *Samta Aandolan Samiti v. Union of India* (2014) 14 SCC 745 : [2013] 11 SCR 1124; *Dr. Anil Kumar v. State of Bihar* (1998) 9 SCC 405 – referred to.

F **3. A MRC can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less meritorious reserved category candidates. Such MRC shall be treated as part of the general category only. Due to the MRC's choice, one reserved category seat is occupied, and one seat among the choices available to general category candidates remains unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore. To remedy the situation i.e. to provide the affected candidate a remedy, the 50th seat which would have been allotted to a MRC, had he not opted**

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for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC. This leaves the percentage of reservation at 50% undisturbed. 50% reservation rule should not be breached under any circumstance. [Paras 14, 15][188-E-G]

Case Law Reference

[1992] 2 Suppl. SCR 454	referred to	Para 7	
[1995] 2 SCR 35	referred to	Para 7	
[1996] 2 SCR 695	relied on	Para 8	
[2010] 6 SCR 698	held inapplicable	Para 9	C
[2012] 11 SCR 87	referred to	Para 9	
[2013] 11 SCR 1124	referred to	Para 10	
[1996] 5 Suppl. SCR 696	held inapplicable	Para 11	
(1998) 9 SCC 405	referred to	Para 11	D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 157 of 2018.

From the Judgment and Order dated 28.10.2016 of the High Court of Judicature at Patna in MJC No. 3680 of 2016 in CWJC No. 16673 of 2016.

WITH

C. A. No. 158 of 2018.

Shekhar Naphade, Subramoniam Prasad, Sr. Advs. Abhay Kumar, Saurabh Mishra, Himanshu, Bilal Khan, Abhinav Mukerji, Mrs. Bihu Sharma, Siddharth Garg, Ms.Purnima Krishna, Advs. for the Appellants.

Ms. Meenakshi Arora, Sr. Adv., Ms. Abha R. Sharma, Ms. Sujeeta Srivastava, D. S. Parmar, Gaurav Sharma, Ms. Amandeep Kaur, Prateek, Dhawal, Ms. Mansi, Prashant Bhushan, Govind Jee, Ranbir Yadav, Advs. for the Respondents.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J. 1. Leave granted.

2. Judgment dated 28.10.2016 passed by the High Court of

- A Judicature at Patna in MJC No. 3680 of 2016 in CWJC No.16673 of 2016 and connected matters is called in question in these appeals. By the said judgment, the full Bench of the High Court answered the reference made to it by the Division Bench of the Patna High Court in the matter of validity or otherwise of admission process for MBBS/ BDS and PG courses pursuant to a circular dated 14.11.1995 of the State Government.

3. Before proceeding further it would be pertinent to note the relevant circular i.e. circular no. 226(24) dated 14.11.1995 which reads as under:

- C “According to this new system, applicable with immediate effect, candidates of reserved classes, who on the basis of merit, are entitled to get admission against 50% seats of the general category, having transferred them in the list of their respective reserved class, they will be facilitated with admission in college and subject of their choice on the basis of their merit in at (respective) list.
- D Thus, after transfer from one to another list, those candidates of that (respective) reserved class, who found place in the bottom of the separate list, prepared for that (respective) class, naturally will come down and can come out of the seats available in the ratio of the percentage prescribe for that (respective) reserved class. To avoid this situation and in any case to avoid the adverse impact on the number of seats prescribed for reserved class after transferring candidates of that class only into that list and so that candidates in the bottom of the list also could not be deprived of admission and so that candidates of reserves class, selected on the basis of merit could not be deprived of being consolidated in general seats. To ensure it, this system will be applicable that after above stated transfer, candidates at the bottom of list of their respective reserved class, though being at the bottom of the merit list of this list, shall be absorbed against 50% seats, available for general category and they shall be allotted colleges and subject available for the general seats on the basis of choice in the order of merit in that list. Thus, the list which will be prepared against 50% seats, available for general category, candidates transferred by above stated method from the list of reserved class will be absorbed in that list only and they will also be facilitated admission.”
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As per the aforementioned circular, a Meritorious Reserved Candidate (MRC) is treated as general merit candidate and is allotted a seat in the general merit category; such MRC may instead choose to take up a seat from amongst the seats earmarked for that particular reserved category to which he belongs to gain admission in the college of his preference; on doing so, the choice of seat in the general category left by the MRC will go to a candidate of the reserved category.

4. 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:

“15. 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.

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A (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.

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(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.

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F 16. The reference is answered accordingly.”

While deciding the reference as mentioned supra, the full Bench of the Patna High Court has distinguished between two sets of cases viz. (a) case of securing admission to medical courses in various institutions through a common entrance test; and (b) case of filling up of vacancies in various civil services through common competitive examination.

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5. In the matter on hand, we are concerned with securing admission to medical courses through a common entrance test and the procedure to be followed in case of a MRC and allotment of seat in college.

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6. It was submitted by Shri Shekhar Naphade and Shri Subramonium Prasad, learned Senior Counsel, on behalf of the appellants, that the reservation cap in admissions to medical colleges cannot exceed 50% in any case. They argued that a MRC migrates to the reserved category when he chooses a seat earmarked for the reserved category. Resultantly, the seat vacated by MRC being a general category seat must necessarily be filled up by general category candidates.

For the respondents, Shri Prashant Bhushan, learned Counsel, supporting the decision of the Patna High Court argued that the MRC continues to be part of the general category even after opting for a seat in the reserved category. He contended that the reserved category candidate who is affected by the choice of the MRC must be given a choice of seats in the general category. Ms. Meenakshi Arora, learned Senior Counsel, submitted that by the process adopted, the 50% reservation is not breached.

7. Often, in a competitive examination held for the purpose of admission in technical and medical institutions etc. some candidates belonging to reserved category/categories, qualify for the 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 class of candidates belonging to reserved categories who qualify on their own merit, to be placed in general merit list, are described, for the purpose of convenience, as Meritorious Reserved Candidate (MRC). It is by now well settled that a MRC who goes on to occupy a general category seat is not counted against the quota reserved for a reserved category candidates, but is treated as an open competition candidate or general merit candidate. This Court in the case of **Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217** has observed thus:

“In this connection it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates” (emphasis supplied)

Even in service matters, the same principle is made applicable. The aforementioned principle of **Indra Sawhney** (supra) is followed for admissions to seats in medical colleges, and the same was followed in

- A the case of *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745. However, the issue before us is more nuanced – whether MRC can opt for a seat earmarked for reserved category? “If answer is yes” then since MRC exercises the option of admission to the seats in different colleges earmarked for reserved category candidates, should a less meritorious reserved category candidate who is affected by such process
- B be given admission to the college left over by MRC consequently?

- This would be better understood by a simplified example. Let it be assumed that there are 100 seats available through one common entrance examination to PG courses in various medical colleges across the country. Of these, 50 are general category seats and the remaining
- C 50 are reserved category seats. X, a reserved category candidate, is assigned rank number 50 on account of his performance in the entrance examination. Thus he is just above the cut-off for reserved category candidates, and has got an open merit rank. Hence, X is a MRC; however, X being in general category is not willing to accept the seat available for
- D general category at the time of his counselling. He wants admission in another college of his preference which is incidentally reserved for reserved category candidates, and a seat in the same is available in the reserved category. Consequently, X chooses a seat available in the college meant for reserved category candidate based on his merit among the reserved category candidates. As he does so, one seat in the general
- E category list of 50 candidates remains unoccupied. In that context, two questions arise for consideration:

- i. Whether X – MRC can opt for a seat earmarked for reserved category?
- F ii. If answer is yes; what happens to the 50th seat which was to be allotted to X – MRC (i.e. 50th general merit candidate) had he opted for a seat meant for the reserved category to which he belongs?

8. This court has repeatedly including the judgment in the case of **Indra Sawhney** (supra), has concluded that the aggregate reservation should not exceed 50%. Therefore, even when a MRC opts for a seat reserved for reserved category candidates, caution has to be exercised to maintain the reservation to 50%. So also it is not open for the authorities to deny a MRC a seat in the college of his preference based on his merit, if such seat is available at the relevant point of time and the same is reserved for candidates of the reserved category to which the

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MRC belongs. This is because there may be instances where a MRC may not get a seat in the institution of his choice on the basis of his own merit in the general merit. Under such circumstances, he may opt to be treated notionally as a candidate belonging to the reserved category only for the purpose of getting a seat in the college reserved for reserved category students. If such MRC is to be placed in the reserved merit list of his category, he would be ranking high and may get better choice of institution or course. A MRC cannot be placed in a disadvantageous position by not permitting him to be treated as reserved candidate, as that would amount to making him suffer for his better performance in the competitive examination.

In the case of **Shri Ritesh R. Sah v. Dr. Y.L. Yamul, (1996) 3 SCC 253**, this Court has had an occasion to deal with both the above questions. This Court held that a MRC who has opted for a seat in the college reserved for reserved category will not migrate/shift to reserved category but should be treated as part of the general category only. However, only for the purpose of getting better choice of seat in the college, he may opt to take a seat in the college reserved for the reserved category. This Court observed thus:

“17...In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept

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A reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

Right from the year 1996, the law is well settled that the provisions should be so made that they will not work out to the disadvantage of a MRC and he would not be placed at a more disadvantageous position than the less meritorious reserved category candidates. Aforementioned objective can be achieved if, after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category, the cases of less meritorious reserved category candidates are considered.

In other words, the reserved category candidate is entitled to admission on the basis of his merit, and he will have the option of taking admission to the colleges where a specified number of seats are kept reserved for the reserved category. However, while computing the percentage of reservation, he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

9. Shri Shekhar Naphade and Shri Subramonium Prasad, learned Senior Counsel on behalf of the appellants, relying upon the Constitution Bench judgment in the case of **Union of India v. Ramesh Ram and Others, (2010) 7 SCC 234**, contended that a seat left over in the general category by a MRC because of his option of a seat in the reserved category, should be filled up by a general merit candidate and not by a reserved category candidate. They relied upon paragraph 39 of the said judgment, which reads as follows:

“39. A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in *Indra Sawhney v. Union of India, (1992) Supp 3 SCC 217*. If the MRC candidates are adjusted against the Reserved Category vacancies with respect to their higher preferences and the seats vacated by them in the General Category are further allotted to other Reserved Category candidates, the aggregate reservation could possibly exceed 50 % of all of the available posts.”

Before commenting on the judgment of the Constitution Bench in **Ramesh Ram** (supra), it would be beneficial if the facts and contexts referred thereto are looked into.

In the said matter, the Constitutional validity of Sub-Rules (2) to (5) of Rule 16 of the Civil Services Examination Rules, for the civil services examinations from 2005 to 2007, was involved. Rule 16(2) was as follows, A

“16(2) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Govt. if by this process they get a service of higher choice in the order of their preference.” B

This Court, after examining the rival contentions on record, held that a MRC opting for a reserved category seat should be treated as a reserved category candidate, which means that he is deemed to have migrated/shifted from the general category to the reserved category to which he belongs once and for all, and that the vacant general category seat left by a MRC should be filled by a general category candidate. It arrived at the following findings: C D

“50. We sum up our answers:-

i) MRC candidates who avail the benefit of Rule 16 (2) and adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the General Pool will be offered to General category candidates. E

ii) By operation of Rule 16 (2), the reserved status of an MRC candidate is protected so that his/ her better performance does not deny him of the chance to be allotted to a more preferred service. F

iii) The amended Rule 16 (2) only seeks to recognize the inter se merit between two classes of candidates i.e. a) meritorious reserved category candidates b) relatively lower ranked reserved category candidates, for the purpose of allocation to the various Civil Services with due regard for the preferences indicated by them. G

iv) The reserved category candidates “belonging to OBC, SC/ ST categories” who are selected on merit and placed in the list of

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A General/Unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16 (2) is not inconsistent with Rule 16 (1) or Articles 14, 16 (4) and 335 of the Constitution.”

B In **Ramesh Ram** (supra), this Court has seemingly and intrinsically arrived at a diametrically opposite decision from **Ritesh R. Sah** (supra). Indeed, the aggregate reservation should not exceed 50% of the available vacancies. While we are undoubtedly bound by **Ramesh Ram** (supra), the very judgment justified why it is so different from **Ritesh R. Sah** (supra). It categorically held that there is a distinction between selection and admission of PG candidates as in **Ritesh R. Sah** (supra), and selection and appointment of UPSC candidates as in **Ramesh Ram** (supra). While in postgraduate admissions, the results will grant all the candidates the same benefit irrespective of rank (i.e., admission in medical colleges), the results in UPSC selections give varying benefits to varying rank-holders, as the allocation of services is based on rank. This Court thus held that in case of UPSC selections, the general category seat vacated by a MRC to occupy a reserved category seat, must be filled up by candidates from the general category. It also held that such MRC should be counted in the reserved category (and not in the general category, as **Ritesh R. Sah** (supra) did) in order to prevent the reservation cap from exceeding 50%. It would be beneficial to look into Paragraphs 31, 32, 66 and 67 of **Ramesh Ram** (supra) for the purpose of distinguishing the said matter from the matter on hand and they read as follows:

F “31. The respondents have also placed strong reliance on this Court’s decision in *Ritesh R. Sah v. Dr. Y.L. Yamul* (1996) 3 SCC 253). The question in that case was whether a Reserved Category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the Reserved Category or should he be treated as a general candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Scheduled Castes or any other Reserved Category. However, it is pertinent to note that this decision was given in the context of admissions to medical colleges

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“32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in the UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a Reserved Category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the General Category especially because if he had availed the benefit of his Reserved Category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16 (2) provides that an MRC candidate is at liberty to choose between the general quota or the respective Reserved Category quota.”

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“66. The decision in Anurag Patel in turn referred to the earlier decision in Ritesh R. Sah v. Dr. Y.L. Yamul. However, we have already distinguished the judgment in Ritesh R. Sah. That decision was given in relation to reservation for admission to post graduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by UPSC. The ultimate aim of civil services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others.

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A 67. The order of CAT is valid to the extent that it relied on the ratio propounded by this Court in *Anurag Patel v. U.P. Public Service Commission*. Even though that decision had in turn relied on the verdict of this Court in *Ritesh R. Sah v. Dr. T.L. Yamul*, the latter case is distinguishable from the present case with respect to the facts in issue. However, we cannot approve of the conclusions arrived at in the Central Administrative Tribunal order as it failed to take note of the unique characteristics of UPSC examinations.”

(Emphasis supplied)

C Hence it is amply clear that, the Constitution Bench makes a distinction between two types of selections, i.e., selection to medical colleges through a common entrance test, and selection to posts in services through the UPSC examination.

D It is also pertinent to note that the Constitution Bench has virtually but impliedly approved **Ritesh R. Sah** (supra) insofar as the procedure to be adopted in cases of admissions to medical colleges through a common competitive examination is concerned. In view of the above, the principles laid down in **Ramesh Ram** (supra) may not be applicable to the facts of this case, inasmuch as this is a case pertaining to admission in medical colleges and whereas **Ramesh Ram** (supra) pertains to selections to the posts for services through the UPSC examination.

E This Court, in the case of **Alok Kumar Pandit v. State of Assam & Ors. 2012 (13) SCC 516**, has reiterated that the dictum laid down in **Ramesh Ram** (supra) is applicable only to admission to various services in the UPSC.

F 10. **Ritesh R. Sah** (supra) was subsequently followed in **Samta Aandolan Samiti v. Union of India, (2014) 14 SCC 745** wherein this Court observed thus:

G “22. No doubt, while doing so, the Court in *Ramesh Ram case* was of the opinion that such meritorious reserved candidates (MRC) who avail the benefit of Rule 16(2) of the Civil Services Examination Rules (which permitted such inter-se transfer) and are eventually adjustment in the reserved category, they should be counted part of reserved category for the purpose of computing aggregate reservation quota. However, it was categorically stated that this proposition applies when there is an appointment to a

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service under the State and categorically excluded the cases of admission in educational institutions. In so far as admission in educational institutions is concerned, such a MRC was to continue to be treated as belonging to general category, which position he attained because of his initial merit. The Court noted that this was so held in Ritesh R. Sah v. Dr. Y.L. Yamul (1996) 3 SCC 253.”

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“24. Since, we are concerned with the admission to medical course, aforesaid judgment squarely applies to the present case. Thus we find that neither upper limit of 50% reservation is breached, nor any rights of the Petitioners are violative or the action of the Respondents have been to their prejudice in any manner. Thus, we do not find any merit in the present petition, which is accordingly dismissed. No costs.”

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(Emphasis supplied).

11. Shri Naphade and Shri Prasad also sought to rely upon the decision of a Coordinate bench of this Court in **State of Bihar v. M. Neethi Chandra, (1996) 6 SCC 36**, wherein this Court observed as follows:

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“10. Let us take a situation in which in a particular reserved category there are x number of seats but the candidates qualifying according to criteria fixed for that category are X+5 with the best among them also qualifying on merit as general candidates. According to the arrangement made by circular No. 20, the first candidate gets a choice along with the general category candidate but being not high enough in the list, gets a choice lesser than what he could secure in the reserved category to which he was entitled. The x number of seats could then be filled up with the four qualifying candidate being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles 14 and 16 of the Constitution. On the other hand, if the direction of the High Court is followed, the first x number of candidates get seats according to merit against the reserved seats but the remaining 5 will also have to be ‘adjusted’ against the open seats of regular candidates. These 5 will be those who are not qualified according to the general merit criteria and so will necessarily displace 5 general candidates who would be entitled to seats on merit.”

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“12. In a particular year, the number of such candidates may be much larger and thus the method evolved by the High Court may create much hardship. The method will also not be in tune with the principles of equality. Hence the method evolved by the High Court will have to be struck down.

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13. At the same time, as pointed out above, all is not well with the Government circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of the circular No. 20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them are denied the choice college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject.” (emphasis supplied)

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M. Neethi Chandra (supra) was upheld by a three-Judge bench of this Court in **Dr. Anil Kumar v. State of Bihar, (1998) 9 SCC 405**, but to the extent that it held that a MRC should not be forced to choose seat from the general category. However, it needs to be mentioned that **M. Neethi Chandra** (supra) may not be applicable to the facts of this case. In the case of **M. Neethi Chandra** (supra), this Court was concerned with a different circular altogether, i.e., Circular No. 11/K1 - 1022/91-K20 (“Circular No. 20”), issued by the Government of Bihar, Department of Personnel and Administrative Reforms on 07.02.1992 on the subject of “provision for reservation for nominating (admission) of Scheduled Caste/Tribes/Backward class/Extremely Backward Class/Female into the Professional Training Institutes.” That circular was challenged on the basis that MRCs were not allowed to choose the seats kept reserved for the reserved category. Paragraph 6 of that circular reads as follows:

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“6. As there is provision in direct appointment to the effect that the candidates belonging to reserved classes, who are selected on the basis of merit, would not be adjusted against reserved seats, similarly maintaining the same arrangement here also the

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candidates selected on the basis of merit for admission into professional training institutes would not be adjusted against the reserved quota for the candidates of reserved classes.”

The judgment of the High Court that was set aside by this Court in **M. Neethi Chandra** (supra) had devised a completely different way of conducting PG admissions, which was not at all akin to the present case. The High Court in the said matter has sought to fill up reserved category posts first and adjust any reserved category candidates not allotted a seat in the general category. This Court in **M. Neethi Chandra** (supra) summarized the method of allotment of seats adopted by the High Court thus,

“To remove the anomalies, the High Court devised a method of allotment of seats by which the reserved seats are offered first (i.e. before the general seats are filled) to the candidates of the reserved category on merit, and after all the reserved seats are so filled up, all other qualifying candidates of the reserved category are “adjusted” against open seats in the general category along with the general merit candidates and offered seats on merit-cum-choice basis (*see* para 11 of the judgment).”

12. In the matter on hand, it is not the case that any other candidate of the reserved category, other than the candidate taking up the MRC’s general category place in choosing general category seat, will be adjusted. Moreover this issue is not under challenge in the present case, as both sides are admittedly not contesting the right of a MRC to choose a seat earmarked for the reserved category. On the other hand, it is fairly submitted by Shri Naphade and Shri Prasad that a MRC has got a right to choose a seat earmarked for reserved category/categories. However, they are only worried that the aggregate reservation should not exceed 50%.

It follows from the cases cited above that the 50% reservation rule should not be breached under any circumstances. As mentioned supra, a MRC in medical admissions has more marks than the last general merit candidate, hence he shall be treated as a general category candidate. Only a choice of college seats in the reserved category is open to him. In this manner, the number of seats in each category remains constant and the upper limit of 50% reservation is not breached.

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A 13. It is clear from **Ritesh R. Sah** (supra), that in the case of
admission to postgraduate medical institutions, a MRC who chooses to
avail of the option of admission to a college with seats kept for the
reserved category is deemed to have been admitted as an open category
candidate. He continues to be open category candidate. There is no
migration into the reserved category even if a MRC opts for a seat
B earmarked for reserved category candidates. The lowest-ranking
candidates who qualified in the reserved category, cannot hence have
option for colleges/seats in reserved category on account of the MRC's
choice, may be adjusted against the choices of college seats then available
C in the general category left over by MRC. However such reserved
category candidates continue in reserved category, except for such option.
Thus, by treating a MRC as a general category candidate, the number
of reserved seats remains the same, and reservations do not exceed
50%. This is also consistent with the principles of equity. In view of the
above, we could not find any reason to disagree with the conclusions
D reached by the full Bench of the High Court.

14. In light of the cases discussed hereinabove, both questions
are answered as follows:

- E i) A MRC can opt for a seat earmarked for the reserved category,
so as to not disadvantage him against less meritorious reserved
category candidates. Such MRC shall be treated as part of the
general category only.
- F ii) Due to the MRC's choice, one reserved category seat is
occupied, and one seat among the choices available to general
category candidates remains unoccupied. Consequently, one
lesser-ranked reserved category candidate who had choices
among the reserved category is affected as he does not get
any choice anymore.

To remedy the situation i.e. to provide the affected candidate a
remedy, the 50th seat which would have been allotted to X – MRC, had
G he not opted for a seat meant for the reserved category to which he
belongs, shall now be filled up by that candidate in the reserved category
list who stands to lose out by the choice of the MRC.

This leaves the percentage of reservation at 50% undisturbed.

H 15. We reiterate that, 50% reservation rule should not be breached
under any circumstance.

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16. The High Court has succinctly dealt with the issue as well as the case law on the point. It has rightly held that **Ritesh R. Sah** (supra) governs admissions in medical institutions. We see no reason to interfere. A

17. Appeals are accordingly dismissed. No order as to costs.

Devika Gujral

Appeals dismissed.

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