



THE J&K BOARD OF PROFESSIONAL ENTRANCE EXAMINATIONS

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Subject:- Representations dated 20-07-2018 made by one Bashir Ahmad Lone F/o Rifat Bashir Rank 481 Score 428 -regarding non consideration of her daughter for MBBS Seat under JKPM- Application of Rule 17/ Disposal of the same.

Officer Order No. 114-BOPEE of 2018

Dated. 24-07-2018

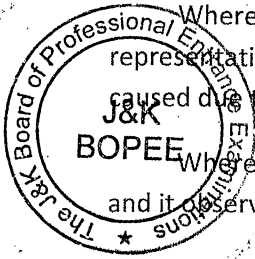
Whereas, the J&K BOPEE on the basis of merit cum preference and after due application of reservation rules while notifying the list of selected candidates vide Notification No. 62-BOPEE of 2018 dated 6-7-2018 had also given the candidates an opportunity of two days to make representations if any, if they chose to do so within two days i.e upto 08-07-2018. The representations received within the stipulated date viz 8-7-2018 were disposed off by the BOPEE vide Notification No.63-BOPEE of 2018 dated 8-7-2018. The interested candidates have also taken admission in the colleges up to the last date notified by the Board viz 17-7-2018; and

Whereas, on 20-7-2018 the Board received a representation from one Bashir Ahmad Lone F/O Rifat Bashir Rank 481 Score 428 representing that Rule 17 of SRO 294 of 2005 has not been applied properly in respect of MBBS Females (JKPM Category) as the JKPM category under score 440 and rank 389 has been allotted seat in JKPM category. While making the representation he has relied upon the Old (Un amended Rule 17) as provided in SRO 294 which is no longer applicable and is reproduced as under:-

"17. Allotment of discipline etc:- A reserved category candidate, if selected against the Open Merit seat, 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 resultant discipline/stream/college in the Open Merit category shall be allotted to the reserved category candidate who gets selected consequent upon the reserved category candidate getting selected in the Open Merit category." and;

Whereas, the father of the applicant has also represented through another representation dated 20-07-2018 to consider his ward against one of the unfilled OM seats caused due to non-joining by upgrading the candidate under Rank 389; and

Whereas, Board has examined the matter and detailed deliberations were also held and it is resolved as under:-



Rule 17 of SRO 294 of 2005 which has been amended vide SRO 49 of 2018 dated 30-1-2018 as applicable now is reproduced as under:-

"17. Allotment of Disciplines etc:- A reserved category candidate, if selected, against the open merit seat 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 left over disciplines/stream/college in the open merit category shall be allotted to the reserved category candidates who get selected consequent upon the reserved category candidates getting selected in the open merit category.

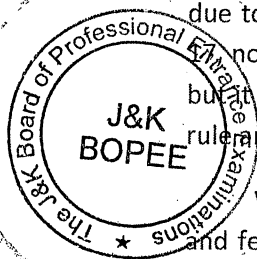
Explanation:-

The left over discipline shall mean such number of disciplines/stream/college becoming available after allotment of seat to the last open merit candidate as allocable under rules. Such seats shall be added to the pool of reserved category candidates in terms of Rule-15 and allotted on the basis of merit cum preference."

Whereas, as per the unamended rule, there was swapping of seats allotted to a reserved category candidate in the OM with his category seat in case he/she did not get a seat/ discipline/stream/college of his/her choice e.g an RBA candidate in the OM if getting his 2nd preference of college for allotment would be considered against a category seat and allotted a college of his choice and preference if available in the reserved category. The seat/college left by the RBA OM candidate was to be shifted to the concerned category viz RBA for allotment of seats to the category candidates in the RBA category as per merit cum preference; and

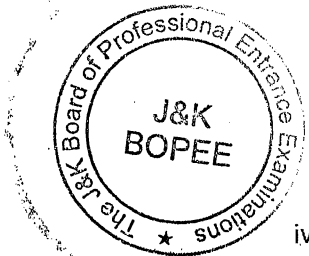
Whereas, as per the amended Rule 17, there is no swapping of seats but the seat left by the category candidate in the OM, consequent upon allotment of a category seat to him is to be allotted to the next OM candidate. The "left over" seats in the OM after allotment of seat to the last OM candidate as allocable under rules are to be allotted to such category candidates whose seats were taken by the OM category candidates e.g under the revised rule i.e if an RBA candidate in the OM is getting his 2nd preference of college in the OM, he will be allotted a seat of his choice from the reserved category on the basis of his merit cum preference. The seat left by him in the OM will be allotted to the next OM candidate. This process will continue till rule 17 is applied. Towards the end some seats in the OM will remain vacant which have to be shifted to such categories where a shortfall has occurred due to application of Rule 17. This is clear also by the explanation added to amended Rule 17 notwithstanding that the last part of the explanation relates to admission to PG courses but it does not alter the explanation to the "left over" seats as mentioned in the amended rule and the reading of the rule also does not convey any other meaning; and

Whereas, Rule 17 has been applied in 17 cases in the NEET UG admission 2018 (male and females) out of which, it has been applied in three case under female quota (two in



CDP and one in OSC). However, while applying the rule, a peculiar situation was faced by the Board as under:-

- i. There were 100 seats for females in OM category and 1% reservation for JKPM category (2 seats). 2 JKPM candidates figuring at state ranks 135 and 187 found place in the OM category as they were allotted seats on the basis of their merit cum preference as if they were OM candidates. For all practical purposes, Rule 17 was applied in 3 cases in the females, 2 in CDP and 1 in OSC. The seats left by those candidates were allotted to OM candidates in accordance with amended Rule 17 notified vide SRO 49;
- ii. At Serial No. 100, there was a JKPM category candidate namely Miss Mansi Charak with Rank 389 with score 440. Rule 17 could not be applied to her as in case it were applied, she would leave a seat and that had to be allotted to an OM candidate in terms of amended Rule 17 read with explanation thereto (to the extent of meaning of "left over" seats) as left over disciplines are to be worked out only after allotment of seat to the last OM candidate as allocable under rules. The capacity under OM category under such a situation would have gone to 101 thereby violating the basic reservation rules (Rule 13). Under the peculiar circumstances the said JKPM category candidate falling in the OM could not be denied consideration against the category seat, which was available at the time of her consideration.
- iii. In case she were treated as an OM candidate (100th candidate) and allotted a seat on the basis of availability of seat in the OM, it would have deprived her of preference of seat/ college. As per records, if she were allotted a seat in OM she could have got 3rd preference viz SKIMS as choice of her college but being a higher merit category candidate than those below her in the relevant category, she was entitled to get the first preference viz JMC Jammu. Board accorded consideration to her in the OM first in terms of Section 10 of Reservation Act, 2004 but to avoid any disadvantage to her, shifted her to the category to protect her merit and preference and as such she got the seat of her choice on the basis of her merit cum preference in the relevant category. Thus for all practical purposes she was allotted a category seat after due consideration accorded to her first in in OM and subsequently by treating her allotment category as a reserved category as Rule 17 was not applicable in her case and she could not be denied the consideration in the reserved category, as it would have caused discrimination/hardship to the candidate. The seat left by the said candidate in the OM was accordingly allotted to next OM candidate and the seats in the OM were filled up by maintaining the capacity of 100. The left over (3 seats) in OM were allotted to the CDP/OSC category candidates as per Rule 17.
- iv. The following candidates were allotted seats in the JKPM category against the 2 available seats as per quota on the basis of their merit cum preferences:-



Sno.	Name	Gender	Score	State Rank
1	Mansi Charak	Female	440	389
2	Mehak Mahajan	Female	436	419

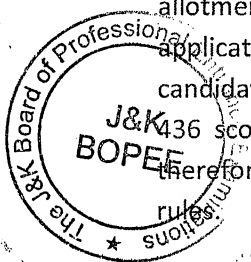
Whereas, the representing candidate whose rank was 481 and score 428 was allotted a seat in OM in the Dental Course on the basis of her merit cum preference as female quota for MBBS course under JKPM category had already exhausted at Rank 419 and board had adhered to the quota allocable to the JKPM category under the reservation rules in MBBS Course and;

Whereas, as the last OM candidate was a reserved category candidate and Rule 17 did not apply in that case the Board appropriately protected the merit of reserved category candidate by protecting her preferences also and a category candidate with a lower merit cannot claim a seat which does not belong to her as per the rules. The meritorious reserved category candidate had no grievance as her merit and preference have been protected; and

Whereas, the request of the father of the candidate to consider his ward against one of the unfilled seats cannot be considered as three seats in MBBS for the females have fallen vacant under OM category due to non joining of candidates after first round of counselling/allotment and are to be allotted to the OM candidates only. Further question of upgrading Miss Mansi Charak Rank 389 suo-muto does not arise unless she participates in the second round of counselling and requests for upgradation i.e. change of college to GMC, Srinagar or SKIMS as she has got a seat /college of her choice as first preference, and in case she applies and is upgraded on her turn she will leave a seat which can be filled up in accordance with the rules. Further, Rule 17 is not applicable in the 2nd round of counseling as already notified in the Information Brochure; and

Now, therefore, having considered representations made by the father of candidate namely Rifat Bashir Marks 428 Rank 481 on 20-07-2018. The same is void of any merit apart from the fact that the candidate even did not make the representation within the prescribed time limit of 2 days as was notified by the Board i.e upto 8-7-2018 and that too after last date of joining of candidates (upto 17-7-2018) when the admission process of first round of counselling was completed and only shortfall seats are to be filled up during 2nd round of counselling. The representation does not merit consideration also as the meritorious category candidate with rank of 389 with score of 440 is satisfied with her allotment who has been allotted the seat considering all facts of her case and after proper application of rules. Besides, two seats in JKPM category had been allotted to higher merit candidates including Rank 389 and the representing candidate has a score of 428 as against 436 score of last candidate selected under JKPM (female) category. The representation therefore does not merit any consideration also as the same is not tenable under applicable

Bwt



BWan
 Controller of Examination 24/7/18
 J&K BOPEE

No:-BOPEE/Adm/30/2018

Dated 24 -7-2018

Copy to the:-

1. Secretary, BOPEE..
2. Under Secretary Jammu/Srinagar.
3. PS to Chairman, J&K BOPEE.
4. Mr. Bashir Ahmad Lone F/o Rifat Bashir, R/o Hadipora Sopore.
5. Office file.

