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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5125/2011

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Judgment dated 27.09.2012

K P SINGH & ANOTHER

..... Petitioner

Through: Mr.J.M. Sharma, Mr.Sandeep Singh
and Mr.Vibhor Verdhan, Advocates

versus

UNION OF INDIA & OTHERS

..... Respondent

Through: Mr.S.C. Sharma, Adv. for Rs-1 to 4
Ms.Arati Mahajan AND Mr.G. Bisht,
Advocates for respondents No.5 & 6

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. As the pleadings in this matter are complete, with the consent of counsel for the parties, the present petition is set down for final hearing and disposal. The facts of the case as set out by the petitioner in the writ petition are that respondent no.2/ Aviation Research Centre (ARC) invited applications for medical officers to ARC, Mahipalpur. Petitioner no.1, who is the father of petitioner no.2 applied and joined the services of respondent no.1 from 13.12.2010 on deputation. The University of Delhi, Faculty of Medical Science issued a bulletin of information for the sessions 2011-12. As per the admission bulletin the basic requirement for admission to the MBBS/ BDS course was that the candidate should have completed age of 17 years and must have passed class 12th examination under the 10+2 system conducted by the CBSE; the candidate should also

have cleared Physics, Chemistry, Biology and English securing at least 50% marks. The session was to commence from 01st August, 2011 and the applications were to reach the university through Medical College on or before 30th September, 2011.

2. According to the petitioner no.1, his daughter (petitioner no.2) had fulfilled all the eligibility criteria and she applied for the MBBS/ BDS along with necessary certificates. The petitioner no.2 has obtained 94% marks in her Secondary School Examination (class 10) in the year 2009 from Gyan Kailash Inter School, Saharanpur, U.P.; and secured 91.4% marks in Senior Secondary School (class 12) in the year 2011 from Holy Convent Vikas Nagar Hastal Rauhulla Road, New Delhi. The petitioner no.2 applied under the ARC quota. By a letter dated 05.07.2011 respondent no.2 forwarded the application of the petitioner no.2 to the Ministry of Defence for consideration of the request of the petitioner for a seat in MBBS/ BDS course against the quota of Ministry of Defence. It is this communication by which the petitioners were aggrieved and which led to the filing of the present writ petition, as it is the case of the petitioners that the seat was to be considered not under the Ministry of Defence quota, but under the ARC quota, where the petitioner was working on deputation.
3. The petitioner no.1 thereafter made a representation that his case be considered against the quota allocated to ARC by the Ministry of Health and Family Welfare for the academic session 2011-12, which was to commence from 01.08.2011. Another representation was made by the petitioner no.1 on 11.07.2011 to the Special Secretary, Aviation Research Centre for considering his daughter for the seat of MBBS under the ARC quota. On 12.07.2011 in reference to the application submitted by petitioner no.1, the petitioner was informed that Joint Director does not

forward applications for MBBS/ BDS course under the Cabinet Secretariat (ARC quota).

4. Aggrieved by the action of the respondents, the petitioner has filed the present writ petition. It may be noticed that on 04.08.2011 counsel for respondent no.1 had informed this court that the name of the daughter of the petitioner along with eligible applicants had been forwarded by respondent on 29.07.2011. This court had then observed in the order dated 04.08.2011 that any admission to the MBBS/BDS course by the Cabinet Secretariat for the seat allocated shall be subject to final outcome of the writ petition.
5. Pursuant to the name of the petitioner no.2 having been forwarded, the petitioner no.2 has been granted a seat in the MBBS course, which is subject to the final outcome of the present petition.
6. Counsel for respondent no.1 submits that although the name of the petitioner was forwarded, since the petitioner was a deputationist, his daughter was not entitled to the benefit which was only available to the regular employees of the ARC and the daughter of the petitioner could not have been considered under the circular dated 06.06.2011.
7. Learned counsel appearing on behalf of respondents no.1-4 submits that the Ministry of Health, Government of India, has allotted one seat of MBBS/BDS to ARC in various medical colleges, which is meant for the wards of the employees who fulfill the required eligibilities and qualifications, as laid down by the Ministry of Health. Counsel further submits that so far as Cabinet Secretariat (ARC) is concerned there is a quota of only one MBBS/BDS seat allotted to this Department, which is to be filled up by the most deserving candidate and who fulfills the eligibility criteria. It is next submitted that this quota of MBBS/BDS seat has been allotted to the Cabinet Secretariat (ARC) w.e.f. Academic year

2002-2003. In order to fill up one such seat the Cabinet Secretariat (ARC) invites applications every year from the eligible candidates who are wards of the employees of this Department by issuing a circular to all the branches at Headquarters of this office at New Delhi and outstation units spread over the entire country. The applications so received are to be examined, checked and scrutinized for the purposes of eligibility in the light of the guidelines and conditions laid down by the Ministry of Health as per their Office Memorandum dated 7.7.2008. Reliance is placed on this Office Memorandum by counsel for respondents no1-4 wherein it has been categorically stated that this Office Memorandum would be applicable to the cases of children of serving personnel. After the applications are received a list containing names of candidates found eligible as per the conditions is sent to the Cabinet Secretariat along with the merit list prepared on the basis of marks obtained by the candidates. After due satisfaction a merit list is prepared by the ARC and the same is forwarded to the Ministry of Health for final selection of the most eligible candidate. Counsel contends that it is ultimately the Ministry which finally selects the candidate for one seat of ARC quota.

8. Present petition is also opposed by learned counsel for respondents no.1-4 on the ground that petitioner is an employee of Indian Air Force, presently on deputation with respondents no.1-4 since 13.12.2010 and, thus, the petitioner cannot be treated as a regular employee of the ARC.
9. Mr.Sharma, counsel for the respondents no.1 to 4 next submits that the petitioner is an employee of the Indian Air force and his discipline, service condition and service privileges are governed by the Indian Air Force Rules and Regulations and not by Civil services. It is submitted that even as per the terms and conditions of the petitioner on deputation he is entitled to the benefits as per the Rules of service as framed by the

Ministry of Defence. As per the terms of deputation as approved vide order dated 5/7/83-DO-II dated 25.05.1995, the petitioner would be entitled to get all concessions as per the Defence Forces Rules. A copy of the order dated 25.05.1995 has been filed. Attention of the court is drawn to the terms with regard to pay, to show that the defence services personnel on deputation to ARC would be eligible to the rank pay and other kinds of pay (qualification pay, qualification, grant/ technical pay/ non-practical allowances etc.) as admissible from time to time in defence services, according to the rules and orders of the Indian Armed Forces Army and Navy. The stand taken by the respondents no.1 to 4, is that the quota seat of the MBBS and BDS are for the wards of serving personnel of the ARC and not for the wards of the deputationists. It may be noticed that this writ petition was filed by the petitioner on 21.07.2011. On 05.10.2011 an application under Order 1 Rule 10 CPC was filed by Dr.Nishamani Behera, who is a regular employee of ARC. The prayer made in this application was that the writ petition be dismissed as the Central Administrative Tribunal would have the jurisdiction, and this court lacks jurisdiction. Subsequently, an application was filed by Mr.Aditya Behera (son of Dr.Nishamani Behra) under Order 1 Rule 10 CPC on 31.10.2011 seeking intervention. Both the applications were allowed and the counter affidavit has been filed by the applicants (respondents no.5 and 6). As per the counter affidavit filed by respondents no.5 and 6, it is contended that the cause of action for intervening in the writ petition arose on 06.09.2011 at first, when for the first time communication by a signal message was issued by ARC Headquarters with regard to the fact that the Central Selection Committee of Ministry of Health and Family Welfare had recommended the name of the instant writ petitioner for taking provisional admission into the MBBS

seat which was reserved for ARC employees under the Central Pool, Cabinet Secretariat quota. The respondent no.6 was initially placed at serial no.2 in the waiting list. The respondent no.5 made a representation dated 07.09.2011 before the ARC authority opposing the request of the petitioner for being considered for the seat, as the petitioner was a ward of a deputationist from the Indian Air force while the quota was made for the ARC permanent employee. Vide communication dated 07.09.2011 issued from the Office of Joint Deputy Director (NGO) ARC Headquarters, New Delhi to the Deputy Director, (Administrative), ARC, Charbatia, Cuttack, the respondent no.6 was asked to express his willingness for the BDS seat which fell vacant and upon unwillingness expressed by Miss Anne Milan, the candidate was placed at Serial No.1 in the waiting list.

10. It is submitted that the seat which has been allotted to the petitioner, is subject to the final outcome of the writ petition since Miss Anne Milan has expressed her unwillingness to avail the benefit and therefore, the respondent no.6, who was placed at serial no.2, in the waiting list, would become the ultimate beneficiary. The respondent no.6 also prayed that one BDS seat be reserved for respondent no.6 for the next academic session 2012-2013.
11. Ms.Arati Mahajan, counsel for respondent no.5 and 6 have also supported the case of respondent no.1 to 4. During the pendency of this matter in the rejoinder filed by the petitioner, the petitioner has referred to the order passed by this court on 10.01.2012, wherein the petitioner had referred to the case of one Sh.Babu Yogesh, and stated that the aforesaid case also pertained to a deputationist like the petitioner and the respondent / ARC had nominated his son for the allotment of MBBS seat in the quota allotted to it. And reliance was also placed on letter dated 11.07.2011

addressed by the petitioner to the Special Secretary, ARC. However, this fact was denied by the counsel for the ARC and it was reiterated that the seats to the MBBS/ BDS are filled up by the serving officers of ARC and they had never offered a seat to a ward of a deputationist. Reliance was also placed by the petitioner to a reply to ARC, Headquarters vide letter No.ARC/COORD/5/2008 dated 25.08.2008 and vide letter No.VII/Mise./2004/II-1910 dated 26.08.2008. JWO G.Sridharan (a deputationist in ARC from Indian Air Force), who showed his incapability to accept the offer for MBBS admission as his son was interested in the Delhi Medical Colleges only. The letter written by G.Sridharan, to ARC has also been filed on record. In support of this plea, the petitioner also filed an affidavit of JWO G.Sridharan, a deputationist in ARC. Strong reliance is placed on this affidavit by the petitioner to show that even in the past a seat has been offered to the ward of a deputationist. A comparison was also made by the petitioner to show that Special frontier Force (SFF) together with ARC, constitute the Director General Security, headed by DG (s)/ Secretary, RAW and Second line of Command is Special Secretary (S-S) ARC. A letter of 04.02.2011 was relied upon to show that the Head of the ARC and SFF both have a common executive cadre. An averment was also made that the officer from ARC, works in Special Frontier Force (SFF) on routine transfer to SFF and vice versa, officer of Joint Deputy Director (JDD) and Assistant Director (AD) level of ARC are posted in SFF and an example of one Sh.Manohar Lal, as Assistant Director Staff Duty (ADSD) was posted in SFF w.e.f. 24.10.2011 and Sh.A.K. Garg, as Joint Deputy Director w.e.f. 14.10.2010 respectively.

12. It is stated by the petitioner no.1 in the reply to the affidavit filed by respondent no.2 that SFF (Special Frontier Force) is a sister organization

of ARC functioning within same directorate i.e. DG(S), also does not make any distinctions between permanent employees and deputationists as SFF Deputationists were allotted MBBS seat in the past. The names of the wards of deputationists considered for admission in the quota are detailed below:

- (i) Miss. Shruti D/o Havaladar Babu in 2009
- (ii) Miss. Divya D/o Havaladar Malkaj R. in 2008
- (iii) Miss Somya Joshi d/o Sh.S.N. Joshi, in 2007 Civilian on deputation
- (iv) Miss Mamta D/o Lt. Col. D.V. Malik in 2004.

13. It is further stated in the reply that it is known through sources that deputationists' ward have been placed in waiting list/selected list in the past. In the year 2007 daughter of a deputationist Gp. Cap. Sublok flying (Pilot) and daughter of a deputationist Gp. Capt. R.P. Kumar (Flying Navigator) were in the waiting list and Miss Garima being a topper of that year secured a seat in 2007. Similarly, in 2008 son of a deputationist JWO G. Shreedharan was selected being a topper.
14. The respondent no.2 filed an additional affidavit, pursuant to the orders of 10.01.2012, as per details available the yearwise details of MBBS seats allocated to wards of ARC w.e.f. Academic Session 2003 to 2010 were given. According to these details it is only in the year 2008 that admission was offered to Babu Yogesh, the ward of a deputationist. In the addition affidavit it was however, stated that in the year 2008 a seat was offered to Babu Yogesh son of Sh.G.Sridharan, however, he had declined the offer. As a result the seat was availed of by Ms.Anshu Tiwari, daughter of a regular employee of the Aviation Research Institute. It was clarified that the Special Frontier Force though is a constituent of DGS, yet it is a separate organization, independent of respondent, ARC. Another affidavit was filed by the petitioner on 31.01.2012. In this

affidavit of 31.01.2012, it was averred that the affidavit filed by respondent no.2 was not as per the directions of this court vide order 10.01.2012, as the court ordered respondent no.2 to file details of candidates, who were in the zone of consideration and in the manner in which the seats were filled up. Stress was laid by the petitioner that the wards of deputationist were considered for allotment of MBBS seat quota allotted to ARC. Yet another affidavit was filed by the respondent no.2, wherein it was deposed that in the year 2008 Mr.Babu Yogesh son of a deputationist was offered a seat due to oversight and when this lapse came to notice thereafter no such error has been committed in future. It is submitted that the petitioner cannot derive any benefit of the error committed by the respondent no.2. Counsel for the petitioner has placed reliance on 1997 Vol. 8 SCC page 372 to draw the attention of this court with regard to the concept of deputation. The meaning of the word deputation and the fact that it has different connotation in service law in comparison to the dictionary meaning of the deputationist. Reliance was also placed by counsel for the petitioner on **Haryana State Minor Irrigation Tubewells Corporation and Ors. Vs. G.S. Uppal & Ors.** (2008) 7 SCC 375 and more particularly paragraph 19 in support of his plea that once a person is appointed in a particular cadre he is entitled to the benefits attached to the cadre where he joins irrespective of the fact that he is a direct recruit or he has joined by way of promotion, transfer or deputation. Relevant portion reads as under:

“19. It is well-settled that the State can make reasonable classification if it has a nexus with the object sought to be achieved. It is admitted position in the present case that posts of SDOs/SDEs/AEs can be filled up by the Corporation by any one of the three known methods, namely, direct recruitment, on promotion or by transfer/deputation. Once a person is appointed to a post in a particular cadre, the source of his recruitment or the method of his

appointment becomes irrelevant. The Corporation has framed its Service Bye-Laws and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, each post in the Corporation will carry a time scale of pay; the present pay scale being indicated in Appendix-II and further that the pay scale is subject to revision by the Board, which will, however, generally follow the pattern adopted by the Government of Haryana from time to time. The employees of the Corporation, since its inception in 1970, had been getting the same pay scales as that of the employees of the Haryana Government and the Board of Directors having already equated the pay scales of the Engineers of the Corporation commensurate to the pay scales of the Government employees, but the State Government has not concurred with the decision of the Board of Directors. By virtue of Clause 81(v) of the Memorandum of Association of the Corporation, the Directors of the Corporation in their discretion have powers to appoint, remove or suspend such Managers, Secretaries, Officers, Clerks, Agents and Servants of permanent, temporary or special services, as they may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to require security of such amount as they think fit in such instances. The power to fix the salaries or emoluments of the employees of the Corporation, thus, specifically rests with the Directors of the Corporation and by virtue of Rule 5.1 of Part-V of the Service Bye-Laws, as mentioned in the earlier part of the judgment, the Corporation had favourably considered the claim of the respondents by recommending the same scales for them, as were being given to their counterparts in the service of the Government Departments. The proposal of the Board of Directors of the Corporation for revision of pay scales to its employees came up before the Standing Committee in its meeting held on 28.05.1992 and the Standing Committee approved the pay scales in a selective manner. The revision in pay scales of the Superintending Engineers, Accounts Officers, Circle Head Draftsmen, Divisional Head Draftsmen, etc. were approved, whereas the revision of pay scales of the respondents, who are AEs/SDOs/SDEs, was postponed and it was decided that the matter would be examined separately by the Finance Department.”

15. Ms.Mahajan, counsel for respondents no.5 and 6 has relied upon the case of *M.Jagdish Vyas & Ors. Vs. Union of India & Ors.* AIR 2010 SC 1596

and more particularly paragraph 20, in support of her plea that a distinction can be made between a departmental candidate and a deputationist. Relevant portion reads as under:

“20. In our opinion, the final decision has been taken by Government of India for relaxing the minimum qualifying marks for the departmental candidates as a one time measure in order to facilitate the departmental candidates to get promotion to the posts of JAO. Deputationists, on the other hand, had been provisionally allowed to sit in the examination subject to the final decision of the competent authority whether to absorb them or not. These conditions were made known to the deputationists in the policy decision dated 30.9.2000. The categorization of deputationists and the departmental candidates into the two categories, in our opinion, has been rightly upheld by the High Court. The law has been well settled for many years that members of one homogenous group have to be treated equally. At the same time Articles 14 and 16 do not mandate that un-equals are to be treated as equals. In this case, the classification cannot be said to be either irrational or arbitrary. It had a clear nexus with the objects sought to be achieved, i.e., to fill in as many vacant posts from the departmental candidates working on the lower ranks provided they reached bare minimum qualifying standards in the JAO, Part-II Examination. So far as the deputationists are concerned, the respondents were entitled to insist on recruiting the best from among the deputationists. Hence, the higher criteria for deputationists cannot be said to be arbitrary or discriminatory. Such classification is permissible under Articles 14 and 16 of the Constitution of India. The law that Articles 14 and 16 permit reasonable classification of employees has been settled for many decades and reiterated in a catena of judgments by this Court. We may notice here only the observations made by the Constitution Bench in the case of S.G. Jaisinghani Vs. Union of India [AIR 1967 SC 1427] wherein this Court has held as follows:

“The relevant law on the subject is well-settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment

or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.”

16. Counsel for the respondents no.5 and 6 has also relied in the case of **Balkrishna Pandey Vs. State of Bihar and Ors.** AIR 1996 SC page 888 and more particularly paragraph 6, to show that an employee cannot claim lien on the deputed post, reads as under:

“We are informed that pursuant to the interim directions granted by the High Court and also by this Court the appellant has continued to work in the Directorate of S.E.P. Though he was continuing in the Department, he must be deemed to have continued to hold his lien as a Senior Statistical Assistant in the parent department, namely, Statistical Department and he will be entitled to all the rights and to further promotion, if any, in that department according to rules.”

17. In support of her plea that the seat offered to the petitioner was on account of a mistake of the authority; respondent no.6 should not be made to suffer; and, thus, the strength of the college should be increased to accommodate respondent no.6, reliance is also placed by counsel for respondents no.5 and 6 in the case of **Bimal Krishan Khanna Vs. Kamal Nain Khanna & Ors.** 1999 (51) DRJ page 462 and also on a decision

rendered by a Division Bench of this court in the case of *Tejpal Yadav Vs. Union of India* LPA 611/2010 wherein the Division Bench had referred to a judgment of the Supreme Court and held that in case on account of mistake of the authority, the student should not be made to suffer and the strength in the college should be increased. For the same submission, reliance is placed in the case of *Ruchika Duggal Vs. AIIMS & Ors.* [WP(C)No.5517/2011] in which case the Court had directed creation of a supernumerary seat for the petitioner. Reliance is also placed in the case of *Udai Pratap Singh Yadav Vs. Veterinary Council of India & Ors.* [WP(C)No.7373/2011] where delay was condoned in granting of admission.

18. Relying on the aforesaid judgments the counsel for respondent no.6 has prayed that the writ petition of the petitioner be dismissed and the respondent no.6 be granted admission in the present academic session 2012-13.
19. Counsel for the petitioner submits that the petitioner has completed one full year and she has succeeded in both the semesters and in case the writ petition is dismissed and her admission is cancelled, not only will the seat go awaste, but the student will also lose not one but two academic years. Counsel for the petitioner has also contended that in any case respondent no.6 cannot derive any benefit, as respondent no.6, approached this court on 31.10.2011, which was beyond the cut-off date.
20. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. It is not in dispute that upon the applications being invited by the ARC for medical officers, petitioner no.1, who is the father of petitioner no.2, joined the ARC on deputation on 13.12.2010. It is also not in dispute that one seat of MBBS/BDS has been allotted to the Cabinet Secretariat (ARC) with effect from the academic year 2002-2003.

The short question, which arises for consideration before this Court, is that as to whether the wards of petitioner no.1, who is a deputationst with Cabinet Secretariat (ARC) since 13.12.2010, would be entitled to the said seat in comparison to the ward of a regular employee of the ARC. The second question, which arises for consideration before this Court, is that what would be the effect of cancellation of the admission granted to petitioner no.1 and in case admission of petitioner no.1 is cancelled whether respondent no.6 would be entitled to a seat in the academic year 2012-2013 as prayed by respondents no.5 and 6. To answer the second question first few dates would be relevant. Father of respondent no.6, who is a regular employee of ARC, made an application, under Order I Rule 10 CPC on 5.10.2011 in the present petition, with the following prayer:

- “a. Kindly allow the intervention application. And/or
- b. The writ petition may be dismissed on the ground of bypassing the original forum i.e. the Central Administrative Tribunal, which is the statutory remedy prescribed under Section-19 of the Administrative Tribunals Act, 1985.”

21. An application for intervention was filed by respondent no.6 on 31.10.2011. Both the applications were made beyond the cut-off date for granting admissions.
22. It has been strongly urged before this Court by learned counsel for respondents no.5 and 6 that since admission was wrongly granted in favour of petitioner no.2, respondent no.6 should not be made to suffer and respondent no.6 should be granted admission in the academic session 2012-2013 even if it amounts to addition of a seat. The prayers made by respondents no.5 and 6 cannot be granted as it is settled law that seats cannot be increased indiscriminately without proper infrastructure as per the Regulations of Medical Council.

23. The Apex Court has also frowned upon the idea of carrying forward any unfilled seat for the one academic year to the next academic year. It would be useful to refer to the observations made by the Supreme Court of India in the case of *Faiza Choudhary v. State of Jammu & Kashmir & Another*, Civil (Appeal) No.6346/2012. Paras 12 to 14 read as under:

12. A medical seat has life only in the year it falls that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. No rule or Regulation has been brought to our knowledge conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or Regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years.

13. The Medical Council of India Act provides that admission can be made by the medical colleges only within the sanctioned capacity for which permission Under Section 10A/recognition Under Section 11(2) has been granted. This Court in *State of Punjab and Ors. v. Renuka Single and Ors.* (1994) 1 SCC 175, held that the High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing authorities concerned to violate their own statutory rules and Regulations, in respect of admissions of students. In *Medical Council of India v. State of Karnataka* (1988) 6 SCC 131, this Court held that the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in the medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council. In *Medical Council of India v. Madhu Singh and Ors.* (2002) 7 SCC 255, this Court held that there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. Recently, this Court in *Satyaprata Sahoo and Ors. v. State of Orissa and Ors.* JT 2012 (7) 500 has reiterated that it would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years.

14. Learned Senior Counsel appearing for the Appellant referred to few judgments of this Court stating that this Court had previously given certain directions to accommodate candidates in the succeeding years, but that was done in our view only in extraordinary circumstances and issued in view of the mandate contained in Article 141 of the Constitution which cannot be treated as a precedent for this Court or the High Courts to follow. We, therefore, hold that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or Regulation to that effect.

24. It would also be useful to reproduce the observations made by the Apex Court in the case of *Satyaprata Sahoo & Ors. v. State of Orissa & Ors.*, reported at 2012 (7) SCALE 153. Paras 28 to 30 read as under:

“28. Medical Council of India in the counter affidavit raised some objections for giving admissions beyond the sanctioned admission capacity. Reference was made to Section 10A of the MCI Act which provides that admissions can be made by Medical Colleges only within sanctioned capacity for which permission under Section 10A /recognition under Section 11(2) has been granted. This Court in *State of Punjab and Ors . v. Renuka Singla and Ors.* (1994) 1 SCC 175 held that the High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and Regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration, the infrastructure, equipment, staff, the limit of the number of admissions is fixed by the Medical council of India.

29. Further, in *Medical Council of India v. State of Karnataka:* (1998) 6 SCC 131, this Court held the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.

30. In *Mriduldhara (Minor) and Anr. v. Union of India and Ors.* (2005) 2 SCC 65, this Court held as follows:

Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.”

25. Even otherwise since respondent no.6 did not approach this Court before the cut-off date nor any independent proceedings were initiated, in my view even if the admission granted to petitioner no.2 is cancelled respondent no.6 cannot derive any benefit of the same.
26. In the case of *State of Punjab & Ors. v. Inder Singh & Others*, reported at (1997) 8 SCC 372, the Supreme Court has observed that the word deputation has a different connotation in Service Law and the dictionary meaning of the word ‘deputation’ is of no help. Para 18 reads as under:

“18. Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go

back to their parent departments and working there as Constables or Head Constables as the case may be.”

27. The Supreme Court has further observed in the case of *State of Punjab & Ors.* (supra) that there can be no deputation without the consent of the person so deputed and therefore he would know his rights and privileges in the post to where he is deputed. While dealing with the case of Constables, who were initially enrolled in the Police Department and later on deputed to the Criminal Investigation Department (CID) of Punjab Police, a strange situation had occurred where during the course of deputation the Constables earned promotions on an ad hoc basis and some of the Constables even reached the rank of ad hoc Sub Inspectors. When the Constables were sought to be repatriated to their parent departments they were to go back as Constables or Head Constables. Faced with that situation they had approached the High Court. The High Court held that the order of repatriation could not be set aside.
28. In the case of *D.M. Bharati v. L.M. Sud*, reported at 1991 Supp. (2) SCC 162, the appellant was working as a Tracer in Municipal Corporation of Ahmedabad. He went on deputation to the Town Planning Establishment where he was promoted as Junior Draftsman. There was also a proposal to promote him as a Surveyor-cum-draftsman but before his promotion could be materialized the Town Planning Establishment was wound up. He was reverted back to his parent department and posted as a Tracer and not as a Junior Draftsman. The Court held that promotions earned by an employee on deputation did not enjoin any protection and on repatriation he could only be accommodated only on his original post or to the post to which he stood notionally promoted.
29. What is relevant to notice is that on deputation the deputationists were granted promotions and they derived benefit of the promotion during their

tenure on deputation. There is no quarrel with the proposition that being an employee of Indian Air Force petitioner's no.1 service condition would be governed by the India Air Force Rules and Regulations, however, petitioner no.1 cannot be denied the benefits/advantages attached to the post during the period of his deputation. The petitioners have stated on affidavit that in the Special Frontier Force the benefit of one seat was offered to the wards of deputationist, details of which have been furnished on affidavit. The petitioners have also laboured hard to show that even in the past wards of deputationists were considered for admission by the ARC, however, being lower on merit, they may not have succeeded in getting the admission in MBBS/BDS. Respondents no.1-4 has, however, submitted that except in case of Sh.Babu Yogesh no seat was offered to the ward of a deputationist and this seat was also offered inadvertently, however, there is no explanation as to why the respondent Cabinet Secretariat vide their letter dated 13.9.2011 provisionally offered the MBBS seat to the petitioner no.2. Although with a rider that the provisional admission would be subject to orders of the Court. In my view one of the reasons for offering this seat was that the ARC was not clear as to whether the ward of a deputationist could be considered for allotment of a seat or not.

30. While the depositions cannot derive benefit of promotion attained during the course of deputation and would have to serve on the post held by him or would have to join the post on the notional promotion at his parent cadre but during the period of deputation it cannot be said that he would be deprived the privilege of promotion or any other related benefit as has been noticed in the case *State of Punjab & Ors.* (supra). Similarly in the absence of any specific bar, during the period of deputation the petitioner

cannot be deprived of a privilege or an allowance or any other advantage which may be offered to him during the period of deputation.

31. Respondents no.1-4 have been unable to support the plea raised by them that a person during his period of deputation would not be entitled to the privileges attached to his post. Thus, it cannot be said that the ward of a deputationist cannot be considered for a MBBS seat in the reserved quota of ARC.
32. This court cannot also lose track of the fact that petitioner no.2 has completed two semesters and in case the admission granted to the petitioner is cancelled, the seat would go a waste and petitioner no.2 would also lose not one but two academic years. This situation would not benefit anyone. After this order was finally dictated, counsel for respondents no.5 and 6 have informed this court that respondent no.6 has been successful this year and he has been granted admission under the ARC quota in Maulana Azad Medical College, New Delhi.
33. Accordingly, present petition is allowed. Petitioner would be entitled to regular admission. The prayers made by respondents no.5 and 6 are declined.

G.S.SISTANI, J

SEPTEMBER 27, 2012

ssn /msr