

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) Nos.5569/2011 & 6554/2011**

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Reserved on: 06.03.2012

Decided on: 16.03.2012

IN THE MATTERS OF

W.P.(C) 5569/2011

SANA-UR-REHMAN

..... Petitioner

Through: Mr.Ram Prakash Gupta and
Mr. A.J. Khan, Advocates

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder Rupal and
Ms. Shawana Bari, Advocates for
Respondents No.1 & 2.
Mr. Jai Bansal, Advocate for
Mr.Adnan Mastan/Impleader.

A N D

W.P.(C) 6554/2011

ADNAN MASTAN

..... Petitioner

Through: Mr. Jai Bansal, Advocate

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Through: Mr. Mohinder Rupal & Ms. Shawana Bari,
Advocates for Respondents No.1 & 2
Mr. Rajeev Saxena, Advocate for
Respondent No.3.
Mr. Ram Prakash Gupta & Mr. A.J. Khan,
Advocates for Respondent No.4.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. This common judgment shall dispose of two writ petitions, wherein both the petitioners have sought issuance of directions to

respondent No.1/Delhi University to admit them to the Mahir-E-Tib(MD) Unani Course in the academic session 2010-11.

2. To a large extent, the factual background of both the petitions is identical. The petitioner in WP(C) No.5569/2011, i.e., Dr.Sana-Ur-Rehman(hereinafter referred to as '**Dr.Sana**') and the petitioner in WP(C) No.6554/2011, i.e., Dr.Adnan Mastan(hereinafter referred to '**Dr.Adnan**') qualified their BUMS Course from Delhi University. While Dr.Sana completed the BUMS Course and Surgery Examination in the year 2007, Dr.Adnan completed his course in the year 2010. In April-May 2011, respondent No.1/Delhi University invited applications for admissions to Mahir-E-Tib(MD) Unani and Ayurved Vachaspati(MD) Ayurved for the academic session 2010-11. Allotment of seats under Mahir-E-Tib is made by the Government of India and the number of seats offered each year is also settled by the Government who forwards this information to respondent No.1/Delhi University and accordingly the process of admission is undertaken. For the academic year 2010-11, the Government of India had released eight seats in four courses for admission, and communicated the same to respondent No.1/Delhi University in October 2010. Admission to Mahir-E-Tib(MD Unani) in A & U Tibbia College, University of Delhi is made through an entrance examination (PGMET-2010 A &D) conducted by the

Faculty of Ayurvedic and Unani Medicine, University of Delhi. In Mahir-E-Tib, a total of four courses were offered for admission in the said year , which are as below:-

- (a) Amraz-E-Niswan Wa Qabalat
- (b) Ilmu Saidla
- (c) Moalejat
- (d) Munaful Aza

3. Pertinently, in the previous academic year 2009-2010, the Government of India had released only two seats in Mahir-E-Tib Unani in the discipline of Moalejat. However, in the next academic year 2010-11, the Ministry of Health and Family Welfare had released a total of nine seats in Mahir-E-Tib Unani Course in all the four disciplines, of which eight seats were allocated under 85% Delhi University quota and the ninth seat was released under the All India quota.

4. The Bulletin of Information for the academic year 2010-11 issued by respondent No.1/Delhi University had laid down the schedule of important dates as also general instructions for admission. The postgraduate courses with intake capacity under Mahir-E-Tib Unani were

declared as below:-

- | | | |
|-----|---------------------------|-------------------|
| (i) | Amraz-E-Niswan Wa Qabalat | - 02(Two seats) |
| (a) | Ilmul Saidla | - 03(Three seats) |
| (b) | Moalejat | - 02(Two seats) |
| (c) | Munaful Aza | - 02(Two seats) |

5. As per Instruction No.(VII) relating to `Reservation of Seats`, the bulletin stipulated that reservation would be implemented for SC/ST/OBC and others upon applying the 13 point roster system. Instruction No.(VIII) relating to `Selection of Candidates`, stipulated that there would be an entrance test for admission to Mahir-E-Tib & Ayurved Vachaspati under the respondent No.2/Faculty of Ayurvedic & Unani Medicines and the said test would be conducted by respondent No.1/Delhi University.

6. A meeting of the Joint Admission Committee of respondent No.2/Faculty of Ayurvedic & Unani Medicine was held on 11.05.2011 and the committee took the decision with regard to identification/allocation of seats in the MD Unani and MD Ayurveda courses for the session 2010-11. The extract of the minutes of the meeting of the committee relevant to the MD

Unani course is reproduced hereinbelow:-

"Item No.1:

(a) The Committee considered the application of Roster to identify seats for SC/ST/OBC Categoeires in Mahir-e-Tib (MD Unani) and Ayurveda Vachaspati (MD Ayurveda) Courses for the session 2010-11 and after detailed discussion decided as under:-

- (i) that 13 Post Roster be implemented to identify reservation of seats in P.G. seats of Ayurvedic & Unani Medicine discipline for 85% Delhi University Quota & 15% All India Quota as the number of seats is less than 14 (Fourteen).
- (ii) that the replacement of seats be finalized by the Admission Committee year-wise and it should be ensured that the specialty of discipline should also rotate year-wise so that none of the specialty in reserved for a particular categories (SC/ST/OBC) repeatedly.
- (iii) that the Faculty should maintain a permanent register for the purpose.

(b) The Committee finalized the 13 Point Roster for the Session 2010-11 for 85% Delhi University Quota as well as for 15% All India Quota as under:-

- (i) The total number of seats in MD Unani are 09 (Nine) (Amraz-e-Niswan Wa Qubalat – 02 Seats, Ilmu Saidla – 03 Seats, Moalejat – 02 Seats, Munafal Aza – 02 Seats)

- (ii) The distribution of MD (Unani) seats: (08 seats under 85% Delhi University Quota and 01 seat under 15% All India Quota).

13 Point Roster			13 Point Roster		
2010-2011		Courses	2010-2011		Courses
1	UR	Molejat 2009-10	1	UR	Amraz-e-Niswan Wa Qubalat 2010-11
2	UR		-	-	
3	UR	Molejat 2010-11	-	-	-
4	OBC1		-	-	
5	UR	Amraz-e-Niswan Wa Qubalat 2010-11	-	-	-
6	UR		-	-	
7	SC1	Ilmul Saidla 2010-11	-	-	-
8	OBC2		-	-	
9	UR	Munaful Aza 2010-11	-	-	-
10	UR		-	-	

Note:(i) 13 Point Roster was implemented w.e.f. the year 2009-10 to identify reserved points for MD Molejat seats as such, the replacement points fall at point 3 & 4 for the year 2010-11.

(ii) The rest of the disciplines have been started w.e.f. session 2010-11."

7. In the admission form, the candidates applying for MD Unani course were not provided with any option to select the discipline. As per the procedure prescribed, after declaration of the results of the entrance test on the appointed date, the eligible candidates were sent for counselling as per their merit and were entitled to select any discipline of their choice at the time of counselling, as per the availability of seats in different disciplines. Immediately after holding the counselling, the Department would record

each candidate's preference of discipline and simultaneously the candidate would be required to furnish an undertaking that he was informed of the vacancy position at the date and time of counselling and asked to opt for a particular discipline out of the available seats.

8. Alongwith many other applicants, both the petitioners herein also applied for admission in the MD Unani course in the Delhi University for the academic session 2010-11. Initially, both the petitioners had applied under the OBC category. The entrance examination was conducted on 26.6.2011 and the results were declared on 29.6.2011. The date of counselling was fixed as 23.07.2011. The merit list of candidates was displayed on the website of the medical faculty as also of the respondent No.1/Delhi University. On 19.07.2011, Dr.Sana submitted an application to respondent No.2 stating *inter alia* that as he was not sure as to whether he belonged to the OBC creamy layer or to the OBC non-creamy layer and to avoid any dispute/risk, he did not want to take the benefit of seat allocation on the basis of OBC category.

9. As per the rank wise list of candidates who had qualified for admission under Mahir-E-Tib MD Unani, Dr.Sana was placed at rank No.7 in the common merit list and at rank No.4 in the OBC category. Dr.Adnan was

placed at rank No.8 in the common merit list and at rank No.5 in the OBC category. All the successful candidates who had sat for the PGMET(A&U) 2010-11, appeared for counselling on 23.7.2011. As there were five seats in the general category and the rank of Dr.Sana was seventh in the common merit list, he was unable to secure admission in the general category. On the other hand, Dr.Adnan was placed at the eighth rank in the general category and at the fifth rank in the OBC category and therefore he claimed that he was a successful candidate in the OBC category and entitled to allotment of the one remaining seat out of three seats that were available in the reserved category.

10. Having withdrawn his claim under the OBC category and being unable to secure admission in the general category, Dr.Sana filed WP(C) No.5569/2011 on 1.8.2011 and staked his claim to a seat in the OBC category claiming that he did not fall in the creamy layer and therefore prayed that respondent No.1/Delhi University be directed to grant him admission in the MD Unani course for the academic year 2010-11. The second ground taken in the alternate was that respondent No.1/Delhi University had adopted an arbitrary and illegal procedure of carrying forward two seats of Moalejat course allotted in the previous year, i.e., the academic year 2009-10 to the current academic year, 2010-11 and thereafter, had

wrongly applied the 13 point roster system which had caused variation in disciplines as also the reservations. It was thus averred by Dr. Sana that the allotment of two seats and the admission conducted for the academic year 2009-10 had no relation to the next academic year 2010-11 and that due to an incorrect application of the 13 point roster system by the respondent No.1/Delhi University, the petitioner had been wrongly deprived of a seat in the MD Unani course.

11. Notice was issued in WP(C) No.5569/2011 on 5.8.2011. On 17.8.2011, respondent No.1/Delhi University was directed to keep one seat vacant till further directions. Immediately thereafter, Dr.Adnan had approached this Court on 6.9.2011 by filing WP(C) No.6554/2011 stating *inter alia* that he had attained eighth rank in the general category and belonged to the non-creamy layer in the OBC category and as he was a successful candidate in the counselling conducted by the respondents, he was entitled to allotment of the one seat directed to be kept vacant, but due to the objections raised by Dr.Sana, the said vacant seat had been withheld thus depriving him of his right to admission in the MD Unani course.

12. The aforesaid writ petition was tagged with WP(C) No.5569/2011 and vide order dated 24.10.2011, it was agreed by all the parties that as the

issue involved in both the petitions was identical, pleadings in WP(C) No.5569/2011 would be considered for the purposes of deciding both the writ petitions. As a result, a counter affidavit was filed by respondent No.1/Delhi University in WP(C) No.5569/2011, wherein it was stated that Dr.Sana had been placed at rank No.4 in the OBC category and at rank No.7 in the common merit list and he had claimed that the M.D. (Unani) seat in Moalejat be offered to him under the OBC category. As per the 13 point roster system for the academic year 2010-11, one MD seat in the Moalejat course was reserved for the OBC category. However, on 19.7.2011, Dr.Sana had submitted a representation to the respondents that since his father was working as a Lecturer in A & U Tibbia College, he may not be falling under the OBC category as he belonged to the creamy layer. He further stated that to avoid any dispute/risk in future, he did not want to take any benefit under the OBC category. The aforesaid representation of Dr.Sana was placed before the Joint Admission Committee of A & U Tibbia College in its meeting held on 25.7.2011. The Committee examined the documents submitted by Dr.Sana and was of the opinion that a clarification would be needed from the Government of India. However, in the meantime, the present petition came to be filed by Dr.Sana.

13. During the pendency of the present petitions, counsel for Dr.Sana had stated on 24.10.2011 that in view of the letter dated 22.7.2011 addressed by Dr.Sana to the Dean of respondent No.2/Faculty of Ayurvedic & Unani Medicines, wherein it was submitted that he did not want to take any benefit under the OBC category, he would confine his arguments by laying a claim to the one vacant seat available in the MD Unani course, on the ground that having attained Rank No.7 in the overall merit list, Dr. Sana was entitled for being accommodated to that seat for the reason that the said vacant seat ought to have been treated as an unreserved seat. As a result of the aforesaid statement made by learned counsel for Dr.Sana, the entire controversy with regard to Dr.Sana's earlier claim that he may or may not be falling in the creamy layer in the OBC category was laid to rest, thus leaving only one issue for consideration, which was whether the 13 point roster system had been applied correctly by the respondent No.1/Delhi University for the purposes of filling up the eight seats in the MD Unani course for the academic year 2010-11.

14. Learned counsel appearing for Dr.Sana had submitted that the allocation of subjects(disciplines) by respondent No.1/Delhi University was

based on an erroneous assumption that two seats for the Moalejat course released by the government in the previous academic year 2009-10 were to be counted by applying the carry forward system for the academic year 2009-10 to the academic year 2010-11. It was canvassed that the carry forward mode of operating the 13 point roster adopted by the respondents was erroneous and it had adversely affected the rights of Dr.Sana and had it been applied correctly, he would have been allotted an unreserved seat. He claimed that the two seats in the unreserved category in the courses of Manafulaza and Amraz-E-Niswan Wa Qabalat had been wrongly filled up by OBC candidates and had the 13 point roster been correctly applied, students in the OBC category would have filled up the said two seats and the remaining one seat for the unreserved category would have remained unfilled and would have gone to Dr.Sana. It was urged that restricting the roster to nine seats for the academic year 2010-11 has resulted in a change in the sequence of disciplines and thus caused irreparable harm and injury to Dr.Sana, who had been deprived of a seat.

15. To put it differently, the sum and substance of the argument of the learned counsel for Dr.Sana was that while applying the 13 point roster

system for the academic year 2010-11, respondent No.1/Delhi University had erred by taking into consideration eleven seats in the MD Unani course, which had happened on account of an incorrect application and had the 13 point roster system been applied correctly, the seats ought to have been allotted in the following manner:

1.	Moalejat	Out of 2 seats 1 st	Unreserved
2.	Moalejat	2 nd	Unreserved
3.	Amraz-E-Niswan Wa Qabalat	Out of 2 Seats 1 st	Unreserved
4.	Amraz-E-Niswan Wa Qabalat	2 nd	OBC
5.	Ilmul Saidla	Out of 3 seats 1 st	Unreserved
6.	Ilmul Saidla	2 nd	Unreserved
7.	Ilmul Saidla	3 rd	Schedule caste
8.	Munafulaza	Out of 2 Seats 1 st	OBC
9.	Munafulaza	2 nd	Unreserved

16. *Per contra*, Mr.Rupal, learned counsel for respondent No.1/Delhi University had submitted that as per the common merit list, candidates at

rank No.1 and 2, namely, Dr.Sarwar Alam and Dr.Danish Chishti respectively had both opted for the Munafulaza course, as both the seats in the said course fell under the unreserved category; then Dr.Mohd.Abid at rank No.3 had opted for the Moalejat course in the seat falling under unreserved category. Thereafter, Dr. Shakeel at rank No.4 had opted for the Ilmul Saidla course and had been allotted a seat in the OBC category and Dr.Mohd.Zakir, at rank No.5 had opted for an unreserved seat in the Ilmul Saidla course. Dr. Shabnam, a candidate who was at rank No.6, had opted for the Amraz Niswan course and got a seat in the unreserved category thus leaving one seat vacant in the OBC category which was to be filled up in the Moalejat course.

17. Learned counsel for respondent No.1/Delhi University had further submitted that if the 13 point roster system is operated independently for each year as urged by the learned counsel for Dr.Sana, it would create an imbalance in the entire quota system for the reason that under the 13 point roster system, the first three seats fall in the unreserved category and if the 13 point roster system is applied by the University, without taking into consideration the admissions granted in the previous

academic year, the candidates in the unreserved category would stand to gain each year, thus resulting in frustrating the right of the other candidates in the OBC/SC/ST category. He emphasized that the 13 point roster system was required to be operated in such a manner that one entire cycle had to exhaust itself and only thereafter, could the second cycle commence. To fortify his submission that the 13 point roster system is to be implemented as a running account from year to year, reliance was placed by learned counsel for the respondents on a decision of the Supreme Court in the case of R.K.Sabharwal and Ors. Vs. State of Punjab and Ors. reported as **(1995)**

2 SCC 745.

18. Mr.Bansal, learned counsel for Dr.Adnan supported the submissions made by Mr. Rupal and reiterated that the 13 point roster system is a running account from year to year and must be maintained on the same lines. To substantiate the aforesaid argument, he relied upon the contents of an Office Memorandum dated 2.7.1997 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India on the subject of 'Post based reservation policy'.

19. Having regard to the aforesaid facts and circumstances of the case as noted hereinabove, it is clear that none of the parties herein have disputed the fact that reservation was required to be implemented for filling up the seats in the MD Unani course. As per the Bulletin of Information for Mahir-E-Tib (MD Unani) course 2010-11, reservation of seats were to be implemented for OBC/SC/ST upon applying the 13 point roster system. The undisputed list of candidates, who have been admitted in the MD(Unani) course 2010-11, is as below:

Rank	Candidate	Category applied	Category Opted	Subject
1.	Sarwar Alam	OBC	UR	Munaful Aza
2.	Danish Chishti	Gen	UR	Munaful Aza
3.	Mohd.Abid	Gen	UR	Munaful Aza
4.	Shakeel	OBC	OBC	Ilmul Saidla
5.	Mohd.Zakir	Gen	UR	Ilmul Saidla
6.	Shabnam	OBC	UR	Amraz Niswan
7.	Tenzen Wangchuk	ST	SC	Ilmul Saidla

Both, Dr. Sana and Dr. Adnan are contenders for the eighth seat lying vacant under the orders of this Court.

20. There is no dispute about the fact that till the academic year 2008-09, the 13 point roster system had not been implemented for the MD (Unani) course and that the same came to be implemented for the first time in the academic year 2009-10. The 13 point roster system is to be operated in the following manner for allocation of seats:-

(1) 1 st seat - UR	(6) 6 th seat - UR	(11) 11 th seat - OBC
(2) 2 nd seat - UR	(7) 7 th seat - SC	(12) 12 th seat - UR
(3) 3 rd seat - UR	(8) 8 th seat - OBC	(13) 13 th seat - ST
(4) 4 th seat - OBC	(9) 9 th seat - UR	
(5) 5 th seat - UR	(10) 10 th seat - UR	

21. In the year 2009-10, the Government of India had released only two seats and that too in respect of a specific discipline, out of four courses namely, Moalejat course. Upon operation of the 13 point roster system as indicated above, the aforesaid two seats in the Moalejat discipline were adjusted by the respondents against the first two unreserved seats in the roster point. In the next academic year 2010-11, the Government of India had released a total of nine seats in all four disciplines in the Mahir-E-Tib(MD) Unani course. The bifurcation of the seats in the four disciplines

was done in the following manner:-

2010-2011		Courses
1	UR	Molejat
2	OBC	
3	UR	Amraz-e-Niswan Wa Qubalat
4	UR	Ilmul Saidla
5	SC	
6	OBC	
7	UR	Munaful Aza
8	UR	

22. In the academic year 2010-11, when the Government of India released nine seats in all the four disciplines, the 13 point roster system was applied from the 3rd roster point. As a result, in the academic year 2010-11, when two seats were made available in the Moalejat discipline, one seat in the Amraz-E-Niswan Wa Qabalat discipline, three seats in the Ilmul Saidla discipline and two seats in the Munafulaza discipline, the same were required to be filled up by applying the 13 point roster system and by starting the allocation of the seats from the 3rd roster point, which fell in the unreserved category. This was followed by assigning one seat in the OBC category and two seats in the unreserved category and again followed by assigning one seat in the SC category, then one seat in the OBC category and the last two seats in the unreserved category. As per the prescribed mode of allocation of seats in the 13 point roster system and keeping in mind the options that were given by the candidates for the different disciplines as were available to

them at the time of counselling, the picture that would emerge for allocation of the eight available seats, is as below:-

Rank	Candidate	Applied Category	Opted Category	Subjects available to choose as per their rank & category	Subject opted	Remarks
1	Sarwar-E-Alam	OBC	UR	Molejat (UR) Molejat (OBC) Amraz Niswan (UR) Ilmul Saidla (UR) Ilmul Saidla (OBC) Munaful Aza (UR) Munaful Aza (UR)	Munaful Aza (UR)	Only 7 th point of roster marked as SC category in Ilmul Saidla was not available to him as he was an OBC candidate.
2	Danish Kamal Chishti	Gen	UR	Molejat (UR) Amraz Niswan (UR) Ilmul Saidla (UR) Munaful Aza (UR)	Munaful Aza (UR)	Only UR category was available to him as he was a Gen candidate + One UR seat in the Munaful Aza course utilized by Rank 1.
3	Mohd. Abid	Gen	UR	Molejat (UR) Amraz Niswan (UR) Ilmul Saidla (UR)	Molejat (UR)	Only UR seat available to him as he was a Gen candidate + Two UR seats in the Munaful Aza Course utilized by Rank 1 & 2.
4	Shakeel	OBC	OBC	Molejat (OBC) Amraz Niswan (UR) Ilmul Saidla (OBC)	Ilmul Saidla (OBC)	Two Munaful Aza (UR) & one Molejat (UR) utilized by Rank 1, 2 & 3.
5	Mohd. Zakir	Gen	UR	Amraz Niswan (UR) Ilmul Saidla (UR)	Ilmul Saidla (UR)	Only one UR seat was available to him as he was a Gen candidate + Two UR seats in Munaful Aza & one UR seat in Molejat utilized by Rank 1, 2 & 3.
6	Shabnam	OBC	UR	Molejat (OBC) Amraz Niswan (UR)	Amraz Niswan (UR)	Two Munaful Aza (UR) and one Molejat (UR) & two Ilmul Saidla (UR & OBC) utilized by Rank 1, 2, 3, 4 and 5.
7	Sana-Ur-Rehman	Gen	UR	NIL	Disputed	All UR categories utilized by higher rankers. No seat available in Gen category.
8	Adnan Mastan	OBC	OBC	Molejat (OBC)	Disputed	Only one Molejat (OBC) seat remaining vacant
9	Tenzen Wang Chuk	ST	SC	Ilmul Saidla (SC)	Ilmul Saidla (SC)	Being the only SC/ST candidate amongst all the candidates who had applied for the course, the SC seat went to him.

23. The submission made by learned counsel for Dr.Sana that the roster point system had been wrongly implemented by the respondent No.1/Delhi University and that it ought to have been operated in the academic year 2010-11 independently of the preceding year, is without any basis. Rather, the aforesaid argument runs contrary to the decision of the Supreme Court in the case of R.K.Sabharwal(supra), wherein it was held as below:

"4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of

the backward class have already been appointed/promoted against the general seats. **As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed.** Despite any number of appointment/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

5. We see considerable force in the second contention raised by the learned counsel for the petitioners. **The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts.** The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts.....are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste

and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. **The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive.** The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their populations. The numerical quota of posts is not shifting boundary but represents a figure with due application of mind. **Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter.** The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster - points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation." **(emphasis added)**

24. The submission made by learned counsel for Dr.Sana that the percentage of reservation had to be worked out by counting the number of seats which are available in a particular academic year in relation to the course in question, and the total seats available in a particular course are to be allocated by applying the 13 point roster system on an annual basis without considering the allocations made in the previous year, is legally flawed as it would result in depleting the extent of reservation required to be made each year and thus defeat the very objective to be achieved under Article 16(4) of the Constitution of India. The argument canvassed by the learned counsel for Dr. Sana that for filling up the seats in the MD Unani course, the 13 point roster is to be operated by considering each year independently of the previous year and by taking into consideration only such number of seats that are made available by the Government of India for the said year, if taken to its logical conclusion, cannot withstand closer scrutiny as it would result in negating the very purpose of making reservation. This is for the reason that under the 13 point roster system, the first three seats in the roster point have been earmarked for allocation under the unreserved category and if the roster system is permitted to operate independently in each year without taking stalk of the number of seats assigned under different categories in the previous years, the outcome would inevitably create an imbalance as the candidates in the OBC/SC/ST

category for whom reservation is required to be made, would stand to lose the first three seats of the 13 point roster system on an annual basis and their turn would come only thereafter from roster point No.4 and that too, if at all any seats are left after making the allocations. Take for example the academic year 2011-12, wherein the Government is stated to have released only three seats in the Ilmu Saidla course. If the formula of Dr.Sana's counsel is applied, then all the three seats would end up in the kitty of the unreserved category, leaving the remaining candidates in OBC/SC/ST categories high and dry. This would result in causing an undue hardship to the candidates in the reserved category and bestow an undue favour upon the candidates in the unreserved category.

25. It is pertinent to note that the carry forward rule was also discussed by the Supreme Court in the case of Akhil Bharatiya Soshit Karamchari Sangh(Railway) represented by its Assistant General Secretary on behalf of the Association vs. Union of India and others reported as **AIR 1981 SC 298**, wherein, reference was made to the judgment in the case of T.Devadasn Vs. Union of India reported as **AIR 1964 SC 179** and it was observed in the aforesaid case that the Constitution Bench did not strike down the carry forward rule on the ground that it was inherently vicious or was bound to lead to vicious results in the future if permitted to operate

without inhibition. Rather, it was observed by the Supreme Court that the repercussions of the actual working of the rule in practice had to be watched from year to year. In other words, it was reiterated by the Supreme Court that the immediate actual practical result of the reservation rule would depend upon the relevant prevailing circumstances in each case.

26. The provision of reservations is aimed at ensuring a level playing field for all and the 13 point roster system is built around the objective of achieving adequate representation to the OBC/SC/ST classes. At the same time, the roster point system cannot be operated in such a manner so as to cause an imbalance by applying the reservation rule in a lopsided fashion that may result in excessive reservation. If the 13 point roster system is implemented in the manner as sought to be urged by learned counsel for Dr.Sana, as demonstrated above, the consequence thereof would be a complete imbalance in allocation of seats as, in every year, the first three seats made available in the MD Unani course would have to go to candidates belonging to the unreserved category and only after exhausting the said seats, would come the turn of the OBC candidate placed at roster point No.4. The ripple effect of this would be an automatic monopoly by the unreserved category on the first three roster points each year thus marginalizing the chances of those in the OBC/SC/ST categories, who would end up being

inadequately represented on the wrong application of the 13 point roster system.

27. In the present case, the purpose of operating the 13 point roster system by maintaining a running account on a year to year basis is to ensure that the percentage of seats reserved for SC/ST and backward classes actually gets translated into reality by making such allocations. It may be emphasized that the seats falling under OBC/SC/ST category are to be filled up from amongst the members of the reserved category alone and candidates belonging to the general category cannot be considered for the reserved seats, nor can they be permitted to jump the queue by insisting that the 13 point roster system be operated independently each year so that the first three seats in every academic year get automatically allocated to candidates falling in the unreserved category.

28. In view of the aforesaid facts and circumstances, the Court upholds the stand of the respondents that the 13 point roster system ought to be maintained as a running account and be operated on a year to year basis and if in the academic year 2009-10, the seat allocation had stopped at roster point No. 2 of the cycle, the seats to be allocated to candidates in the next academic year 2010-11 were to be counted from roster point No.3

and continue being allocated thereafter till all the available seats got exhausted and further, the cycle would continue in the next academic year till it would get completed.

29. The aforesaid view is also fortified by the note in the minutes of the meeting dated 11.05.2011 held by the Joint Admission Committee of respondent No.2/Faculty, wherein it was clarified that the 13 point roster system was implemented w.e.f. the year 2009-10 to identify reserved points in MD Molejat seats and as a result, the replacement points fell at points No.3 and 4 for the academic year 2010-11. Further, the Committee had clarified that the replacement of seats would be finalized on a year-wise basis and it would be ensured that the specialty of the discipline should rotate on a year-wise basis so that none of the specialty is reserved for a particular category repeatedly.

30. It may further be relevant to note that even if the Court accepts the argument of learned counsel for Dr.Sana that the 13 point roster system cannot be operated as a running account and ought to be operated by the respondents on an annual basis, independent of the previous year, his client would not stand to gain for the reason that in such an eventuality, the seats assigned under the first three roster points, which fall under the unreserved

category, would be filled up with one seat from Molejat, one seat from Amraz Niswan and one seat from Ilmu Saidla. The fourth roster point that falls under the OBC category would go to the discipline of Molejat. The fifth and sixth unreserved seats would go to Munaful Aza. The seventh SC seat and the eighth OBC seat would go to Ilmu Saidla. Keeping in mind the ranks of the candidates, Dr. Sana, who was at rank No.7 in the common merit list, would have still been left without any seat in the unreserved category as by the time his turn would have come during the course of counselling, all the five seats in the unreserved category would have been filled up by the candidates from the unreserved category, who were senior to him in rank. Thus, either ways, Dr.Sana cannot claim entitlement to the one vacant seat in the MD Unani course in the academic year 2010-11.

31. As a result of the aforesaid discussion, the claim of the petitioner, Dr.Sana in WP(C) No.5569/2011 fails and the said petition is hereby dismissed, while the claim of the petitioner, Dr.Adnan in WP(C) No.6554/2011 succeeds. It is therefore held that Dr.Adnan would be entitled to the one OBC seat lying vacant, in terms of the order dated 17th August, 2011 passed in WP(C) No.5569/2011 and the respondents shall admit him in the discipline of Molejat in the MD Unani Course, Delhi University. The only factor, which is relevant for consideration is that after

the closure of the admissions on 31.10.2011, the academic session 2010-11 had commenced on 01.11.2011 and by now, about four months of the aforesaid academic year have already passed. It is, therefore, deemed appropriate to let the respondent/University decide as to whether Dr. Adnan can possibly be given admission in the MD Unani course for the academic session 2010-11 by giving him extra coaching for him to catch up with the rest of the class. If the respondents are of the opinion that Dr. Adnan cannot be accommodated in the academic session 2010-11, for certain practical reasons, then he shall be accommodated in the Molejat discipline in the MD Unani course in the next academic session 2011-12. The respondent/University shall weigh the pros and cons and take a decision either ways and communicate the same to Dr. Adnan within a period of one week from today, so that he can join his classes accordingly.

The petitions are disposed of, while leaving the parties to bear their own costs.

MARCH 16, 2012
mk/rkb/sk

(HIMA KOHLI)
JUDGE