

\$-

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 970/2023 and CM APPL. 3824/2023

Date of Decision: 01.03.2023

IN THE MATTER OF:

BHAIRAVI JHA,
D/O BINOD KUMAR JHA,
RESIDENT OF C/O- B.K. JHA,
FLAT NO. T-1, 902,
PANCHSHEEL HYNISH APARTMENTS,
NEAR BISRAKH HANUMAN TEMPLE,
GREATER NOIDA, WEST, U.P. PIN: 201306

.....PETITIONER

*(Through: Mr. Shishir Pinaki and Mr. Rajiv Kumar Sinha,
Advocates along with petitioner in-person.)*

Versus

THE DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS) ANSARI NAGAR,
NEW DELHI-110608.RESPONDENT NO. 1

THE REGISTRAR, ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS), ANSARI NAGAR,
NEW DELHI-110608.RESPONDENT NO. 2

THE DEAN, ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS), ANSARI NAGAR,
NEW DELHI-110608.RESPONDENT NO. 3

THE ASSISTANT CONTROLLER (EXAMS), ALL INDIA
INSTITUTE OF MEDICAL SCIENCES (AIIMS),
ANSARI NAGAR,
NEW DELHI-110608.RESPONDENT NO. 4

THE SECRETARY, MINISTRY OF HEALTH AND
FAMILY WELFARE,
NIRMAN BHAWAN, C-WING,
NEW DELHI-110001RESPONDENT NO.5

DR. ANJALI M CHANDOLA
(ROLL NO. 5114759; ID. 171118452)
F 76, RIDGEWOOD ESTATE,
DLF PHASE 4, SECTOR 27,
GURGAON, HARYANA, INDIA, 122009
PERMANENT ADDRESS: A-405, NILGIRI GARDENS ,
URAN ROAD, SECTOR – 24, CBD BELAPUR,
NAVI MUMBAI, MAHARASHTRA – 400614.
.....RESPONDENT NO.6

(Through: *Mr. Atul Kumar, Ms. Sweety Singh and Mr. Rahul
Pandey and Mr. Rajiv Ranjan, Advocates for R-1 -
4/AIIMS.
Mr. Jatin Singh, Advocate for UOI.
Mr. Ketan Paul and Mr. Shashwat Mehra,
Advocates for R-6)*

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant petition, filed under Article 226 of the Constitution of India, is seeking directions for allotment of Super Specialty seat in 'Plastic and Reconstructive Surgery' at AIIMS New Delhi as per the result dated 11.01.2023 of the second round of online seat allocation by respondent Nos.1 to 4-AIIMS. The petitioner also seeks for the quashment of Corrigendum No.02/2023 dated 20.01.2023, issued by respondent Nos.1 to 4-AIIMS, whereby her allotment of seat has been cancelled.

2. The case of the petitioner is that the petitioner is a resident doctor at AIIMS, Rishikesh. She appeared for the Institute of National

Importance Super Specialty Entrance Examination (INI-SS) for admission to the Master of Chirurgiae (M.Ch.) course, January, 2023 Session, in subject 'Plastic and Reconstructive Surgery'. Her preferred choice was AIIMS at New Delhi in the concerned course. She secured rank 5 in the concerned course in AIIMS Merit List *vide* notification No. 197/2022 dated 01.12.2022. According to her, in the Second Online Seat Allocation result dated 11.01.2023; she was allocated a seat in the concerned course. As per the result, she was supposed to report to the allotted institution i.e., AIIMS, New Delhi, between 12.01.2023 to 17.01.2023. She states that she tried to accept the allocated seat from her registered online portal on 12.01.2023, however, the formalities were not allowed to be completed and the online portal reflected that no seat was allotted to the petitioner in the second round. The petitioner thereafter, immediately approached the respondent-authorities and she was told that there was some technical glitch and the same would be resolved immediately. According to her, between 12.01.2023 to 17.01.2023, she approached the respondent-authorities through e-mail and physical interaction also to resolve the issue but she received no written communication from respondent Nos.1 to 4-AIIMS. On 17.01.2023, she contacted the respondent-authorities at New Delhi. On 18.01.2023, the petitioner received an acknowledgement that her request had been forwarded to the Dean. According to her, on 20.01.2023, respondent Nos.1 to 4-AIIMS issued a corrigendum that the seat allotted to the petitioner in the second round has been cancelled.

3. Learned counsel appearing on behalf of the petitioner submits that the entire action by respondent Nos.1 to 4-AIIMS is illegal and improper and once the seat is allocated to the petitioner, the requisite

formalities should have been allowed to be completed and the petitioner cannot be denied the admission to the allocated seat.

4. This matter was taken up for hearing on 25.01.2023, and this court directed the respondents to seek instructions and to file the reply. The matter was taken up for hearing on 01.02.2023, and during the course of hearing, it was noted that after cancelling the seat of the petitioner, the same was allotted to Dr. Anjali M. Chandola and therefore, this court allowed the petitioner to implead Dr. Anjali M. Chandola as respondent No.6 in the petition. The notice was directed to be issued to Dr. Anjali M. Chandola and in the meantime, it was directed that the petitioner should appear before the competent authority of respondent Nos.1 to 4-AIIMS to explore the possibility of allotment of any other seat, if one is available. The matter was thereafter taken up for hearing on 06.02.2023, on which date, the submissions of learned counsel appearing on behalf of respondent Nos.1 to 4-AIIMS were recorded that the application of the petitioner was under active consideration at the highest level. On 09.02.2023, the learned counsel appearing on behalf of respondent Nos.1 to 4-AIIMS pointed out that the request of the petitioner was rejected as there was no seat available and learned counsel for the petitioner wanted to place on record a copy of the decision taken by respondent Nos.1 to 4-AIIMS. On 13.02.2023, when the matter was heard again, certain internal communications indicating the availability of more seats were pointed out by the petitioner. Learned counsel appearing on behalf of the respondent Nos.1 to 4-AIIMS however, was granted time to explain the said document. Learned counsel appearing on behalf of respondent Nos.1 to 4-AIIMS thereafter, filed an additional affidavit to explain the seat vacancy position.

5. During the pendency of the petition, Dr. Anjali M. Chandola-respondent No.6 also filed her counter-affidavit, explaining her case. Learned counsel appearing on behalf of the respondent Nos.1 to 4-AIIMS has also filed the counter-affidavit dated 01.02.2023, an additional affidavit dated 11.02.2023 and a supplementary affidavit dated 20.02.2023. Learned counsel appearing on behalf of the petitioner has also filed the rejoinder to the earlier affidavit dated 03.02.2023.

6. Respondent Nos.1 to 4-AIIMS in their counter-affidavit stated that there were a total of three seats in the concerned branch which were advertised in the Super Specialty Course of M.Ch. for the session commencing from January, 2023. As per the result Notification No.197/2022 dated 01.12.2022, the petitioner was placed at serial No.5 of the merit list. The candidate at serial No.1 of the merit list did not participate in the first counselling. However, the other candidates, over and above the merit position of the petitioner, joined the counselling and showed inclination to join the course and thus, reported to the respondent-authorities between 20.12.2022 to 24.12.2022.

7. The learned counsel for respondent Nos.1 to 4-AIIMS has brought on record, the acknowledgement slip of respondent No.6 showing her reporting on 24.12.2022, and also the copy of the Memorandum dated 26.12.2022, whereby, the concerned candidate was to complete certain formalities. It is however, stated that respondent No.6 did not initially agree to certain terms and conditions mentioned in the Memorandum dated 26.12.2022, and she wanted to withdraw her admission. A communication dated 09.01.2023, (original letter is dated 03.01.2023) was made by respondent No.6 through e-mail.

8. The affidavit filed by respondent Nos. 1 to 4-AIIMS states that since, there was already an application/inclination by respondent No.6 for withdrawal of the seat therefore, on 11.01.2023, i.e. through the second round of counseling result notification, the allocation of the seat was made in favour of the petitioner, who was next in the merit list, as per the result Notification dated 11.01.2023, bearing No.03/2023. It further explains that on 12.01.2023, the matter came to the notice of AIIMS and the meeting was held immediately on 13.01.2023, and after a detailed discussion, it was found that the process of withdrawal/resignation of respondent No.6 was not complete and it was therefore decided that the seat allocated to the petitioner in the second round of counselling, be withdrawn. It further states that the competent authority decided to allow respondent No.6 to join the concerned course as she was placed higher in the merit list. It is further stated that a Memorandum dated 16.01.2023, was written by respondent Nos.1 to 4-AIIMS to the respondent No.6 to join the concerned course and accordingly, respondent No.6 reported to respondent-AIIMS on 17.01.2023. It is further stated that on 23.01.2023, the petitioner was also informed about the allocation of the seat to respondent No.6. Learned counsel for respondent Nos.1 to 4-AIIMS, therefore, explains that the respondent-authorities have not abused their discretion or exercised the same in a selective manner. According to them, the process is to ensure that the merit position is respected and when it was found by respondent-authorities that the admission of the petitioner at one stage, was not complete and respondent No.6, being higher in merit, has already reported for joining, therefore, it was thought appropriate to accept the already granted admission to respondent No.6 in allowing the concerned course to be completed.

9. In its additional affidavit, respondent Nos.1 to 4-AIIMS further explains that respondent No.6 sent an e-mail on 03.01.2023, informing that she did not agree to certain terms and conditions of the Memorandum dated 26.12.2022. It further states that on an online platform, if the concerned seat is not clicked as 'seat occupied', the seat automatically goes to the next candidate who is higher in the merit list. It is therefore, stated that respondent No.6 did not occupy the seat as on 10.01.2023, however, she still had time till 15.01.2023, but somehow, the computer automatically generated the seat allocation order in favour of the petitioner, which resulted in creating a misunderstanding as if the seat was allocated to the petitioner.

10. According to the additional affidavit, respondent No.6 *vide* letter dated 12.01.2023, reported for joining and accepted the terms and conditions of the Memorandum dated 26.12.2022. It is therefore, reiterated that the corrective measures were taken immediately on 13.01.2023 and necessary corrigendum was issued.

11. Respondent-AIIMS has filed a supplementary affidavit dated 20.02.2023, where the seat position has been explained, as was disputed by learned counsel appearing on behalf of the petitioner. According to the supplementary affidavit, it is stated that the document upon which the petitioner earlier relied on, was an internal communication and was not an official document of the academic section. The supplementary affidavit explains that the sanctioned strength of M.Ch. in Plastic and Reconstructive Surgery is 18 for open category and 3 for sponsored category. As on date, 15 seats were already occupied under open category and there is no vacancy against sponsored category. It is stated that there is an Office Memorandum dated 02.09.2016, issued to all departments laying down guidelines

regarding the number of vacant seats to be advertised in consonance with the available number of faculty in respective courses.

12. The relevant guideline indicates that the ratio of 3 students to 1 faculty member has to be maintained. It is therefore, stated that at the relevant time, there were 7 faculties and out of them 2 faculties were ineligible to be the chief guide therefore, taking into consideration the faculty position as 5, the concerned department could have filled up a maximum of 15 seats. Since 12 candidates were already enrolled therefore, 3 more seats were advertised. Learned counsel appearing on behalf of respondent Nos.1 to 4-AIIMS however, states that as of now, 3 seats against open category and 3 seats against sponsored category are vacant but those seats cannot be filled up in view of the notification dated 02.09.2016. The internal note dated 15.02.2022 has been placed on record to justify the aforesaid position.

13. Respondent No.6 has also explained her position by way of a counter-affidavit. She pointed out that since she wanted to explore the possibility of withdrawing from AIIMS with a view to pursuing her medical career in United Kingdom, she wrote an e-mail on 03.01.2023, requesting the respondent-authorities to inform her of the process for withdrawing the admission. She states that on 07.01.2023, she physically visited AIIMS and met respondent No.2 who informed her that she had to pay a sum of Rs.3 lakhs as penalty, in case she wants to withdraw. She therefore, stated that she decided to pursue M.Ch. at AIIMS, New Delhi and started completing the other formalities such as her medical examination, character certificate, home town declaration, identity certificate, etc. She also states that on 10.01.2023, she had already submitted her resignation from her earlier occupied post i.e. Non-Academic Senior Resident ('SR') in the same department. She further states that on 12.01.2023, she presented

herself to respondent No.1-4-AIIMS to complete the formalities and to allow her to join. However, she was shocked to know that her admission was cancelled. She placed on record a copy of the e-mail dated 03.01.2023, letter of resignation from her earlier occupied post i.e. Non-Academic Senior Resident ('SR') dated 10.01.2023, communication dated 12.01.2023 and various other correspondences to indicate that her admission ought not to have been cancelled until the last date for joining had expired. According to her, she had time up to 15.01.2023 and much before the last date for joining, she had already submitted her application and made herself physically available for joining AIIMS. She, therefore, states that as far as her admission is concerned, there is no illegality, her name finds place in the merit position and she has also opted for the seat before the expiry of the last date.

14. Learned counsel appearing on behalf of the petitioner in the rejoinder states that the entire approach of the respondent Nos.1 to 4-AIIMS is illegal and improper. According to him, firstly, the position of the seats has not been explained properly and secondly, extra advantage has been given to respondent No.6 to ensure that she should occupy the seat despite the fact that the allocation of the seat was generated in favour of the petitioner and the petitioner was illegally restrained to complete the formalities. He stated that in all fairness, if on 12.01.2023, respondent Nos.1 to 4-AIIMS realised that the seat was wrongly allocated to the petitioner, the same could have been immediately informed to the petitioner. Having failed to do so, the conduct raises sufficient doubt about *bonafides* of the respondent Nos.1 to 4-AIIMS. He states that the petitioner not only sent various e-mails but also physically presented herself before various authorities but the reason was not explained to her. He therefore, prays that once

the respondent No.6 tendered the letter, showing her inclination to withdraw the seat and the seat in question was allocated to the petitioner, the same must be taken to its logical end and at a later stage, respondent No.6 cannot be allowed to be re-admitted into the concerned course. He, therefore, submits that once the seat was already allocated to the petitioner and the seat in question was admittedly cancelled in favour of respondent No.6 therefore, at a later point of time, the respondent-authorities cannot allow respondent No.6 to be re-admitted in the concerned course. According to him, once the seat is allocated in favour of the petitioner, a vested right is created in her favour. He also states that the respondent Nos.1 to 4-AIIMS cannot claim the error as a 'computer error'. Had it been a 'computer error', some action must have been taken by the respondent Nos.1 to 4-AIIMS. Respondent Nos.1 to 4-AIIMS has not placed on record any corrective measures or have not conducted any inquiry as to how; the seat in question has been allocated in favour of the petitioner. Learned counsel appearing on behalf of the petitioner also states that the Minutes of the meeting dated 13.01.2023, are neither dated nor are the same numbered therefore, the minutes are undated and the same have been prepared to cover up the case of respondent No.6. He further states that even if the internal note dated 15.01.2023 is perused, the same would indicate that there are 7 faculty members working in the concerned department, 2 faculty members who joined recently are also eligible to be guide and as of now, the department concerned can cater to 21 candidates even if the ratio of 1:3 as per the Memorandum dated 02.09.2016 is maintained.

15. I have heard learned counsel appearing on behalf of the parties and perused the record.

16. As per notice dated 03.12.2022 regarding schedule of online allocation of institutes for admission to courses of INIs for January 2023 Session, the online acceptance of the allocated institute was to take place between 19.12.2022 to 26.12.2022 upto 5:00 p.m. The announcement of institute allocation in the first round had taken place on 15.12.2022. The respondent No. 6, after her name was declared in the first merit list, submitted original documents on 24.12.2022. She had also reported to the respondent-AIIMS on 24.12.2022 and thereafter, a Memorandum of allotment was issued in her favour on 26.12.2022. The relevant extract of Memorandum dated 26.12.2022 is reproduced as under:-

“17. Other terms and conditions shall be as under:

- A. Candidate must submit*
 - a) Marital declaration in the form enclosed (Annexure-I). In the event of the candidate having more than one wife living , or being exempted from the enforcement of the requirements in this behalf.*
 - b) Attestation form in duplicate/triplicate in the case of those belonging to Kerala in the form enclosed (Annexure-II) duly completed in all respect.*
 - c) Good Character certificate from a Gazette Officer of the Central/State Govt. of stipendiary magistrate in the prescribed form (Annexure-III)*

If any declaration given or information furnished by the appointee proves to be false or if appointee is found to have willfully suppressed any material information he/she will be liable to remove from above course as well service forthwith besides which other action as the appointing authority may deem necessary

B. He/she will be provided residential accommodation if available. In case of non availability of residential accommodation , house rent will be paid as permissible under the rules.

C. All dues are due to be paid regularly every month. Failure to clear mess bills may result in termination of services without any notice. He will be required to deposit with the AIIMS a case security of a sum as may be prescribed at the time of initial appointment.

D. He/she will be required to wear white Doctors Coat while on duty with his/her name plate at his/her expense”.

17. The relevant extract of the counter-affidavit filed on behalf of respondent Nos. 1 to 4-AIIMS is reproduced as under:-

“If he/she accepts the offer on these conditions, he/she should communicate his/her acceptance to the undersigned immediately and report himself/herself for duty to the undersigned between 02.01.2023 to 15.01.2023 after having been medically examined and declared fit. No further extension will be granted at any circumstances. If he/she fails to do so he should consider this offer as having been withdrawn/cancelled without any further notice.

Please acknowledge the receipt of this memorandum. In case, he/she does not wish to join, please inform by e-mail iims.reg.sracad2@gmail.com”

18. It is thus seen that after declaration of merit position, respondent No. 6 made the necessary compliance of reporting to the institute and, therefore, a Memorandum was issued in her favour which required her to communicate her acceptance to the institute and to report herself for duty between 02.01.2023 to 15.01.2023. She did write an e-mail on 03.01.2023 showing her inclination to withdraw herself. However, on 12.01.2023 she had submitted an application for being allowed to join as soon as possible. The Minutes of the meeting held on 13.01.2023 in Dean’s Committee Room to discuss the matter are extracted as under:-

“Denied joining for Academic SRship in dept. of Plastic surgery

1 message

Anjali Chandola <anjalicandola8@gmail.com> Fri, 13 Jan, 2023 at 08:28

To: director@aiims.edu <director@aiims.edu

Respected sir

I, Dr. Anjali M Chandola, have been selected as an Academic Sr in the department of Plastic and Reconstructive surgery at AIIMS, New Delhi, through INI SS Jan 2023.

I have submitted my original documents as was required at the time of Reporting to confirm my allotted seat. Subsequently I had enquired about the process of withdrawal (in case I could not join due to some personal reasons) and was told by the Registrar and Mr. Anand from the academic section that I can only withdraw myself from the course once

I pay a sum of 3 Lakh rupees. Following this I made arrangements and started completing the requirements needed for joining.

On 12th Jan 2023 I was denied joining by the Registrar and Academic section with no prior intimation or notice from their side.

I must point out that I have not fulfilled the requirements needed to surrender my seat as stated by the Registrar i.e., payment of 3lakh rupee penalty. I have also been working as a Non-Academic SR in the dept of Plastic and Reconstructive surgery since 31/05/2022 and have Not resigned from the same.

I never said that I have withdrawn or that I am surrendering my seat and have merely queried what the process was in case I wanted to.

On enquiring again, I have been met with unprofessional and rude behaviour by the Registrar and no clear explanation has been given to me.

This unjust and arbitrary decision on the side of the institute has left me completely blindsided and is causing me great mental strain.

My last date of joining is till 15th January.

I urge you to please look into the matter and come to a just decision on the same.

Sincerely

Dr. Anjali M Chandola
Candidate id: 5114759
Ph no. 9987722770”

19. The respondent No. 6 thereafter in terms of Memorandum dated 16.01.2023 was directed to report by 18.01.2023 by 5:00 p.m. for the joining process of the concerned course for the January, 2023 session. She reported on 17.01.2023 and thereafter the Memorandum dated 23.01.2023 was issued with reference to communication made by the petitioner informing that in the absence of the requirement related to surrender of the seat not being completed by respondent No.6, it has been decided that the seat could not be allotted to the petitioner. She took all steps to comply with the conditions stipulated in the Memorandum dated 26.12.2022. The original time given in the Memorandum dated 26.12.2022 for reporting was upto 15.01.2023. If her e-mail dated 03.01.2023, which is a sort of inquiry, is ignored, the respondent No. 6 had reported before 15.01.2023. Even on the basis of her e-mail dated 03.01.2023, no decision was taken by respondent Nos.1 to 4-AIIMS to cancel her admission. It is also an admitted position that respondent No. 6 has been granted admission on the basis of her place in the merit list and no higher meritorious candidate than respondent No. 6 has been left out. It is thus seen that there is no reason to find any fault with the admission granted to respondent No. 6.

20. The next question which arises for consideration is whether on the basis of declaration of second merit list on 11.01.2023, the petitioner is entitled for admission.

21. A perusal of facts indicates that on 11.01.2023 announcement of second round of online institute allocation for AIIMS, New Delhi and

other AIIMS colleges for January, 2023 Session had taken place. The name of the petitioner finds place in the list for Subject No. 51, MCH-Plastic & Reconstructive Surgery and she was allotted AIIMS New Delhi. As per important instructions of the announcement of second round of online counseling result dated 11.01.2023, the candidates were to mandatorily report and join at the respective allocated institutes. On the next day when the petitioner tried to complete the formalities, the online portal reflected “*you are not allotted in second round*”.

22. As can be seen from the narration of facts that after declaration of the merit list, the candidates were required to complete various formalities and then only the candidates were entitled for admission. The respondent Nos.1 to 4-AIIMS realizing that the name of the petitioner has wrongly been reflected in the merit list, have taken corrective measure while not allowing the petitioner to complete the formalities. The petitioner did make effort to know the reasons as to why she is not being allowed to complete the formalities and there was no response to her communication but the fact remains that respondent No. 6 still had time upto 15.01.2023 to report for her joining. Since three seats were advertised and three more meritorious candidates than the petitioner were admitted, therefore, a decision was taken to withdraw the result allocating the seat in favour of the petitioner. This court is of the opinion that merely on the basis of reflecting the name in the merit position, no vested right was created in favour of the petitioner when the circumstances clearly show that the name of the petitioner was reflected on account of an inadvertence. It is thus seen that the petitioner is not entitled for admission in the concerned course merely on the basis of declaration of her name in the second merit list which has been cancelled later on.

23. As far as the submission with respect to availability of three more seats in the concerned course is concerned, this court has called upon respondent Nos.1 to 4-AIIMS to clarify the aforesaid position. In the supplementary affidavit dated 25.02.2023, an internal communication dated 15.02.2023 has been placed on record. The same reads as under:-

Subject : Hearing update of WP (C) No. 970/2023 in the matter of Dr. Bhairavi Jha Vs The Director AIIMS, New Delhi & Ors regarding.

We are in receipt of email dated 14.02.2023 from Sh. Atul Kumar , Advocate wherein he has informed that the above case was listed for hearing on 13.02.2023 and the arguments on behalf of both the parties has almost complete, during the course of the hearing , Dr. Bhairavi Jha's advocate shared a photograph of official file noting of AIIMS , which shows that there are 7 seats in total in the course of MCh (Plastic & Reconstructive surgery) whereas, AIIMS has started on affidavit that there was only 3 seats.

Further, the Hon'ble court has directed that a supplementary affidavit be filed in respect of the same and file noting original also be carried to the next date of hearing to show number of total/vacant seat and if any reasoning has been assigned for deciding the same. The next date of hearing is fixed for 20.02.2023.

As discussed, following points are submitted for information and submission of supplementary affidavit before the Hon'ble High Court :-

- *The copy of the internal note as handed over to Learned Counsel on behalf of the AIIMS regarding vacant seat position of the Department is not an official document of the Academic section.*
- *Prior to the admission of the seats on OM No. Prior to advertisement of seats an OM No.F.5-1/2023-Acad.I dated 05.09.2023 was issued to concerned head of the departments for their concurrence under guidelines approved by the appropriate authority (ANNEXURE-I).*
- *As per guidelines: For departments having DM/M.Ch programs, a ratio of 3 students per faculty member (ANNEXURE-II point No.2).*
- *As far as department of Plastic, Reconstructive & Burns Surgery is concerned the sanctioned strength of (M.Ch) Plastic & Reconstructive Surgery course is as under:-*

<i>Mch COURSE</i>	<i>SANCTIONED</i>	<i>ON ROLL</i>	<i>VACANT</i>

	<i>OPEN</i>	<i>SPONS</i>	<i>OPEN</i>	<i>SPONS</i>	<i>OPEN</i>	<i>SPONS</i>
<i>SENIOR RESIDENT (M.ch)</i>	<i>18</i>	<i>03</i>	<i>15</i>	<i>0</i>	<i>3</i>	<i>3</i>

- *As per detail provided by the department, presently total 7 faculty members are on roll in the Department of Plastic, Reconstructive Surgery. Out of 7 Faculty only 5 Faculty members are to be eligible for Chief Guide, 2 Faculty members joined recently.*
- *To be designated as Chief Guide for DM/MCh candidates, minimum experience of 3) years as faculty is essential (ANNEXURE-II, SECTION-B point no.4)*

Submitted for order please

REGISTRAR

ASSOCIATE DEAN"

24. As can be seen from various points noted therein, presently there are seven faculty members who are on roll in the Department of Plastic, Reconstructive Surgery. Out of the seven faculty members, only five faculty members are eligible for Chief Guide. If the ratio of three students for one faculty member is maintained, at best 15 students can be enrolled at a time. The 15 students are already enrolled and are undergoing their courses.

25. Learned counsel appearing on behalf of the respondent Nos.1 to 4-AIIMS clarified that two faculty members who joined recently are not eligible to become Chief Guide. It is thus seen that the course in question is a Super Specialty course; the same requires practical training with sufficient clinical experience and diagnostic facilities. If the respondent Nos.1 to 4-AIIMS decides to maintain the ratio of three students for one faculty member, the same cannot be altered without any good reason. The Super Specialty course would certainly require to be undergone with utmost sincerity and with strict compliance of

applicable rules and regulations. It be also noted that only three seats were advertised and against three advertised seats, three candidates higher in merit to the petitioner have been granted admission, therefore, there is no reason to direct the respondent Nos.1 to 4-AIIMS to admit the petitioner at this stage over and above three advertised seats.

26. This brings this court to consider the aspect of the declaration of the second merit list wherein the name of the petitioner finds place. The para 11 of the counter-affidavit filed by the respondent Nos.1 to 4-AIIMS states as under:-

11. That the Competent Authority after considering her request allocated her seat(online as seat was not occupied) to Dr. Bhairavi Jha, Roll no. 5113419, next in the merit list vide result notification no.03/2023 dated 11.01.2023 in the second round of counselling held on 10.01.2023.

27. The respondent Nos.1 to 4-AIIMS in their additional affidavit dated 11.02.2023 in paras 8 & 9 state as under:-

8. That in the present case, 2nd round of Counselling was set to commence from 10.01.2023. However, Respondent No. 6 did not occupy the seat as the Respondent No. 6 was given time till 15.01.2023 to accept the terms and conditions of Memorandum dated 26.12.2022.

9. Therefore, inadvertently & automatically, the online admission platform allotted the already offered seat, to the candidate next in merit list, i.e., the Petitioner on 11.01.2023.

28. If the averments made in both the affidavits are considered, the same are apparently contradictory to each other. In counter-affidavit the averment is to the effect that the competent authority after considering the request of the petitioner allocated the seat as she was next in merit, whereas, in additional affidavit it is stated that inadvertently and automatically the online admission platform allotted

the already offered seat to the candidate next in merit list, i.e. the petitioner on 11.01.2023. When an institution of national importance such as AIIMS takes any decision, the same assumes some significance. Nothing has been brought on record to clearly suggest as to how the name of the petitioner appeared in the second merit list. If the other pleadings as have been discussed hereinabove are seen, the same clearly reflected that a Memorandum for joining was issued in favour of respondent No. 6 on 26.12.2022. Once the Memorandum dated 26.12.2022 was issued and when she had already reported on 24.12.2022 there was no reason to treat her seat as non-occupied after 24.12.2022. The second round of counseling would only commence when the position with respect to filling up of the seats pursuant to first counselling is over. If the exact vacancy after first round of counselling is not known, there is no point in going for a second round of counseling.

29. This matter has been taken up for hearing on various dates. A considerable amount of public time has been spent to adjudicate the controversy involved herein. The entire controversy has arisen on account of the issuance of the second merit list. Had there not been any anomaly in the second round of counseling, there would have been no occasion for the petitioner to stake her claim. The same was avoidable.

30. It be also noted that regarding the disclosure of the seats, the respondent Nos.1 to 4-AIIMS has not disclosed the correct position in its decision dated 08.02.2023. What has been noted therein is that there were three seats as per the prospectus and all the three seats were filled up in order of merit.

31. This court in terms of the order dated 01.02.2023 in paragraph No.6 directed the petitioner to appear before the respondent-authorities to explore the possibility of getting allotted any other seat, if available.

32. The respondent Nos.1 to 4-AIIMS, however, in a supplementary affidavit dated 20.02.2023, has stated that there were 21 seats and out of 21 seats 15 seats were on rolls. Three seats in the open category apart from three seats in the sponsored category were vacant.

33. The respondent Nos.1 to 4-AIIMS should have disclosed the aforesaid position in its first decision dated 08.02.2023 itself.

34. There was no reason not to accurately disclose the entire seat position and then to say that the claim of the petitioner cannot be considered for any other reason or less seats were advertised on account of non-availability of faculty. There is a marked distinction between the seats available and the seats advertised.

35. It is also to be noted that the correct position of seats was also not disclosed in the additional affidavit filed on 11.02.2023. It is reiterated that when an institution like AIIMS is to take any decision, the same must ensure utmost transparency and fairness. *Prima facie*, this court finds that the same is lacking in the instant matter.

36. With a view to ensure that in future no such anomaly would occur, an inquiry into the entire matter is necessary.

37. Let the Director of respondent Nos.1 to 4-AIIMS get an inquiry conducted and to take appropriate decision depending upon the findings therein.

38. It is a matter of record that total sanctioned seats in the stream of Plastic and Reconstructive Surgery at AIIMS are 21. As on the day of issuance of prospectus, 3 seats of general category were already vacant and 3 seats were likely to be vacant, as the students were to appear in December 2022 examination. The department decided to advertise only 3 seats on the ground that the faculty student ratio would not be maintained for more than 3 seats on account of non-availability of adequate faculty members. The petitioner admittedly stood in merit position No.4. Had there been more seats advertised, the petitioner would have certainly gotten admission in the concerned course. The petitioner has pointed out the difficulty that she does not have any further chance to appear in the said examination on account of her crossing the age criterion. She states that her husband is already working in AIIMS and she has a baby less than 2 years of age who is living with her father in Noida-NCR. She appeared in the entrance examination for the January,2023 session with a hope that upon her qualifying, she would be able to pursue her dreams, one being at a premier medical institute in India and second, of maintaining her family. Had her name not been shown in the second merit list, there would have been no reason for her to approach this court.

39. Considering the peculiar facts and circumstances of the present case where the petitioner is being denied admission for no fault of hers despite her being allocated a seat in the second round i.e. on 11.01.2023 and due to inadvertence of respondent Nos.1 to 4-AIIMS and the fact that she stood in merit position No.4, this court directs that the respondent Nos.1 to 4-AIIMS shall allow the petitioner to avail one more attempt to appear in the next examination without

debarring her only on the ground of her age. If she secures a merit position, her claim for admission may be considered strictly on merits.

40. In view of the aforesaid, the petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 01, 2023

MJ/p'mal/Priya

