

**CHIEF JUSTICE'S COURT**

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE K. VINOD CHANDRAN

HON'BLE MR. JUSTICE JOYMALYA BAGCHI

**COURT NO.1****SUPREME COURT OF INDIA****RECORD OF PROCEEDINGS****I.A. NO. 230675/2025 IN W.P. (C) NO. 1022/1989****ALL INDIA JUDGES ASSOCIATION & ORS****Appellant(s)****VERSUS****UNION OF INDIA & ORS.****Respondent(s)**-----  
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1 **10:30 AM**

2 **SIDDHARTH BHATNAGAR:** May I please, My Lord?

3 **CHIEF JUSTICE B.R. GAVAI:** Yes.

4 **SIDDHARTH BHATNAGAR:** My Lord, we have filed... I have filed three things, My Lord,  
5 a sort of detailed written submissions which I would like to place before Your Lordships. And  
6 then, My Lord, there is a compilation of case law and then as My Lord had said, there's also a  
7 compilation of the rules. My Lord Justice Surya Kant had said we should also file the High  
8 Court rules. So, we have filed those also in a separate compilation. If Your Lordship state...  
9 we've also provided printed copies of the written submissions. If Your Lordships either wants  
10 the PDF volume or the printed copy, either... both are there. The Registry asked us for printed  
11 copies. We've given that. Otherwise, it is in Volume 1 are the submissions and it's right at the  
12 beginning. My Lord, in fact, it starts at PDF page 3. PDF page 3 is the index. PDF page 3 and  
13 otherwise, it's the index page of the printed copy. Your Lordships may have the printed copy  
14 as well. No problem.

15 **CHIEF JUSTICE B.R. GAVAI:** 1 to 50?

16 **SIDDHARTH BHATNAGAR:** That's right.

17 **JUSTICE VIKRAM NATH:** Of the Convenience Compilation?

18 **SIDDHARTH BHATNAGAR:** Sorry, My Lord?

19 **CHIEF JUSTICE B.R. GAVAI:** Amicus.

20 **JUSTICE VIKRAM NATH:** Amicus.

21 **SIDDHARTH BHATNAGAR:** It's, My Lords, the written submissions.

22 **JUSTICE VIKRAM NATH:** Yes.

23 **SIDDHARTH BHATNAGAR:** My Lord, may I just start with the introduction which is at  
24 page 1 because this is... the orders passed by Your Lordships in this application that Your  
25 Lordships are considering. It says, My Lord, "By way of the present application, an anomalous  
26 situation in respect of the *inter se* seniority of District Judges, Direct Recruits and District  
27 Judges Promotees has been placed. This Honourable Court's order dated 7th October 2025  
28 recorded as follows..." I've just put two paras. "This Court *vide* the order dated 17th September

1 '25 had considered an application filed by Amicus who pointed out an anomalous situation. In  
2 most of the states, Judicial Officers recruited as Civil Judge, often do not reach the level of  
3 Principal District Judge, leave aside reaching the position of a High Court Judge. This has  
4 resulted in many bright young lawyers being dissuaded from joining the service at the level of  
5 CJ."

6 At para 10 and 11, this Honourable Court stated as follows. "It cannot be disputed that judges  
7 who were initially appointed as CJ gain rich experience since they were serving in the judiciary  
8 for a number of decades. Furthermore, every Judicial Officer, be it one who was initially  
9 recruited as CJ or one who was directly recruited as District Judge has an aspiration to reach  
10 at least up to the position of a High Court Judge. We are, therefore, of the view that a proper  
11 balance has to be struck between the competing claims. However, this issue would involve  
12 consideration of some of the judgments and orders passed by benches comprising of three  
13 learned judges of this court. Therefore, in order to put the entire controversy at rest and  
14 provide a meaningful and long-lasting situation, we are of the considered view that it will be  
15 appropriate if the issue is considered by a Constitution Bench of five learned judges."

16 And then My Lord, the question framed on the next date, which was 14-10-25, is as follows.  
17 "What should be the criteria for determining seniority in the higher judicial service?" So, the  
18 question though why, is, My Lord, I have limited my submissions to the question as recorded  
19 in the 7th October order and the application to answer this question to the best of what we feel  
20 we should be placing. "It is respectfully submitted that seniority in the higher judicial service  
21 in various states which comprises of a single cadre of District Judges, though further divided  
22 into post of District Judge, Entry Level, District Judge, Selection Grade, and District Judge,  
23 Super Timescale, ought to be fixed in a manner that District Judge is appointed by direct  
24 recruitment and promotion from the cadre of Civil Judges have an equivalence and a balance  
25 be struck so that no one category has an advantage over the others in respect of the said cadre  
26 as also for further aspiration to advance the position of Principal District Judge if any and  
27 further to the position of High Court judges. I say if any because not all states have Principal  
28 District Judge designation. So, that's why if any is mentioned over there. Otherwise, My Lord,  
29 some states have only District Judge, Super Timescale as the highest, and from there they are.

30 My Lord, now if Your Lordship just comes to the first page of the compilation, this is the way  
31 I've divided it into various submissions. I've just, My Lord, read the introduction. I've given a  
32 brief background, My Lords. Then a small discussion on the cadre of District Judges. And then,  
33 My Lords, for me to... or for us to impress upon Your Lordships that there is a requirement of  
34 a quota, some data has to be given. I can't just say I have a quota without.... so, that is My  
35 Lords, Serial No. (d) need or requirement for a quota. And then, My Lords, fixation of seniority

1 in the high judiciary that these with judgment also of Your Lordships. And finally, a summary  
2 of submissions and suggestions. So, this is the way I've divided this note into four or five, My  
3 Lords, portions.

4 If Your Lordships comes back to page 2. Now, this is where, My Lord, the issue was first  
5 considered, para 5. "The disparity in the cadre was noticed in the first National Judicial Pay  
6 Commission, also known as the Justice Shetty Commission, under the Chairmanship of  
7 Honourable Mr. Justice K.J. Shetty in its report. The Justice Shetty Commission submitted its  
8 report on 11-11-99. The commission noted..." I've set out some paras, My Lords, for Your  
9 Lordships' consideration. "...the mixed cadre of District Judges consisting of Promotees and  
10 district recruits in every state judicial service was intended to promote efficiency in the  
11 administration of justice. But the fact remains otherwise. There is a lot of discontentment  
12 between Direct Recruits of district judges on one side and Promotees on the other. The two  
13 classes are generally not on cordial terms. They... in some states, they are not even on talking  
14 terms. They are forming separate associations. They are locked in legal battles, fighting up to  
15 the apex court. They made separate representations to this commission. The root cause for all  
16 these unfortunate fallouts seems to be the mode of direct recruitment, followed by High Courts  
17 and determining the *inter se* seniority between Promotees and Direct Recruits. The High  
18 Courts are not unaware of this bitterness and discontentment in the service, yet seems to have  
19 done little to improve the method of direct recruitment so as to remove the grievance of  
20 Promotees. The common grievance of service judges in the lower cadre in all the states and  
21 which grievance is also highlighted in the memorandum of **All India Judges Association**  
22 is, that the hopes and aspirations of judges who have entered the lowest rung of the judicial  
23 service have been shattered for want of adequate promotional opportunity. It was explained  
24 that the unreasonable quota reserved and unscientific method followed for direct recruitment  
25 of District Judges have practically driven the service judges to despair and despondency. It  
26 was said that they could never think of becoming Principal District Judges. It was pointed out  
27 that advocates are recruited as district judges at a relatively younger age, varying from 32 to  
28 40 years while Service Judges would get a chance of promotion as District Judges only at their  
29 advanced age. Such Direct Recruits would be ranked above the Promotees in the seniority list  
30 and occupy all the central posts. They also deprive the Promotees the chance to reach the High  
31 Court. In the light of the aforesaid, the Justice Shetty Commission recommended the  
32 following. 'It seems to us that it is proper and necessary for all High Courts to have a uniform  
33 procedure for recruitment of District Judges. There should be uniformity as to quota,  
34 minimum and maximum age, and method of selection. Such uniformity is imperative since  
35 District Judge cadre is a feeder service to the High Court and in some cases an onward march  
36 to the Apex Court. Since... 10.80. Since temporary posts are also available for direct

1 recruitment, we consider not exceeding 25% of the post in the cadre of District Judges should  
2 be reserved for direct recruitment. This percentage of reservation would not jeopardise the  
3 interest of the Promotees since we have decided to give them a certain weightage for fixing the  
4 *inter se* seniority, besides providing opportunity to Service Judges to compete for such direct  
5 recruitment. We consider that there should be a minimum age for direct recruitment and it  
6 should be not less than 35 years. To put it more explicitly, the minimum age should be 35.'

7 Next, My Lord, the Shetty Commission further noted that District Judge Entry Level were  
8 provided career progression by way of grant of functional skills in the form of District Judge,  
9 Selection Grade and District Judge, Super Timescale depending on their performance and  
10 recommended that the cadre of District Judges should be divided in the following manner. We  
11 have carefully considered the representation of the High Courts, State Governments and  
12 State... and Service Associations. In our opinion, it is necessary to bring out uniformity in  
13 giving Selection Grade and Super Timescale to District Judges in all the states. It is also  
14 necessary to prescribe the minimum qualification for entitlement of such grade or scale. These  
15 two scales are not to be considered as Career Progression Scales. They are functional scales  
16 depending on performance. Commission recommends 25% of posts in the cadre of District  
17 Judge in each state shall carry Selection Grade. This may be given on the benefit of merit cum  
18 seniority... on the basis of merit cum seniority for those who put in minimum experience of  
19 five years in the cadre. Commission further recommends minimum 10% of the cadre strength,  
20 and District Judges be given Super Timescale for those who are put in minimum of three years  
21 in the cadre of Selection Grade".

22 Now, this has become about 35 and 15, My Lord. Latest judgment of Your Lordships has  
23 amended that. Next, My Lord, recommendation in respect of seniority is that at the bottom of  
24 the page.

25 **CHIEF JUSTICE B.R. GAVAI:** No, it's become 25?

26 **SIDDHARTH BHATNAGAR:** Sorry?

27 **CHIEF JUSTICE B.R. GAVAI:** That has become 25.

28 **SIDDHARTH BHATNAGAR:** No, My Lord, I was talking about the Selection Grade and  
29 the Super Timescale.

30 **JUSTICE VIKRAM NATH:** Super Timescale, yes.

1 **SIDDHARTH BHATNAGAR:** Because that is what page 4 is on. Otherwise, the Your  
2 Lordships are right, it is 50% in the cadre. 50% are directly... are Promotee, regular Promotees,  
3 25% Direct Recruits, and 25% Limited Competitive Examination, by this one, LC. My Lord,  
4 may I just continue reading this a little bit?

5 **JUSTICE VIKRAM NATH:** Yes.

6 **SIDDHARTH BHATNAGAR:** My Lord, 12.106, bottom. This is the recommendation in  
7 respect to *inter se* seniority. "Bearing in mind the aforesaid perspectives, comments and  
8 suggestions made by High Courts, State Governments, Judges and Service Associations, we  
9 have made the uniform rules of recruitment and seniority for operation of all the states and  
10 union territories. The rules of recruitment *inter alia* provides as follows. Reservation for direct  
11 recruitment for members of the Bar to the cadre of District Judges should not be more than  
12 25% of the cadre posts. This is a simple rule prescribing the upper limit for direct recruitment  
13 without any prescription of rota-quota system."

14 Then, My Lord, next is the age is between 35 and 45, and then the examination. And please  
15 come, My Lords, to (vi) which is the 'Rules of Seniority'. "Seniority of the Officers appointed  
16 by direct recruitment or promotion shall be determined according to the dates on which they  
17 report for duty. Where more than one officer is promoted to a cadre at the same time, *inter se*  
18 seniority of the persons who are promoted shall be determined by the *inter se* seniority in the  
19 lower cadre. With regard to direct recruits, *inter se* seniority is determined on the basis of the  
20 rankings in the select list.

21 Weightage for Promotees. According to the feedback information which we have received from  
22 the High Courts regarding average age of Promotees and Direct Recruits made in the last five  
23 years to the cadre of District Judges, the Promotees will always be older in age to Direct  
24 Recruits. Reason being Civil Judges, Senior Division get promotion as District Judges only at  
25 their advanced age, while Bar members are directly recruited at a younger age."

26 Then, My Lord, there's a chart appended to the Justice Shetty Commission which Your  
27 Lordships will see the difference in the various states. In Andhra for instance, average age of  
28 promoting a District Judge, 48. Average age of directly recruited, 39. Then Assam, 51, 38;  
29 Bihar 54, 41. So, in virtually every state, there is that age disparity. So, this is why... now, My  
30 Lord, this is now dealt with at 12.110 and 12.111. "It will be seen from the above table that  
31 average age of Promotees would be about 50 years as against the average age of 42 years of  
32 Direct Recruit. Indeed, the table shows that in a majority of the states such average age of the

1 Promotees would be above 50 years, while that of all Direct Recruits would be less than 42  
2 years."

3 Just pausing here, I have also compiled an... my own chart from the Affidavit filed by the High  
4 Courts about the position today which is later on in the submission. So, Your Lordships may  
5 just see, in 1999 itself, the difference was 50 and 42. And now, today's position I'll be showing  
6 to Your Lordships.

7 12.111, My Lord. "This will have an imbalance in the service conditions of Promotees and Direct  
8 Recruits, and that is the root cause of frustration amongst the Promotees. Apart from the  
9 imbalance in service, Promotees would be denied of higher pay scales like Selection Grades,  
10 Super Timescale, etc., since it is given on the basis of merit and seniority of the officers.  
11 Promotees will not have any chance to become Principal District Judges of districts since such  
12 posts are generally occupied by Senior Judges. They would be wholly denied of opportunity to  
13 go side by side with Direct Recruits in their onward march to reach the High Court. Even if  
14 they are elevated to the High Court, they will have hardly three or four years of service. Such a  
15 short period is not sufficient to make any worthwhile contribution to the High Court.

16 The Commission considers that it is imperative to remove the frustration of Promotees  
17 resulting from the aforesaid imbalance. And the only way we can think of is to give certain  
18 weightage to the Promotees for the purpose of determining their seniority. The system of  
19 giving weightage is not new to service jurisprudence. It has been provided to Officers of the  
20 State Service when they are selected to All India Services. The reference may be made to the  
21 Indian Administrative Service Rules.

22 Then, My Lord, 12.119. "The Commission recommends that Promotees be given a weightage  
23 of one year for every five years of judicial service rendered by them subject to a maximum of  
24 three years." So, pausing here, My Lord, so suppose a Civil Judge is recruited and spends, let's  
25 say, 15 years in the combined cadre of Civil Judge Junior Division and then as senior division.  
26 For those 15 years, when... if that person gets promoted to direct... to a District Judge, will get  
27 three years benefit of seniority. Otherwise, My Lord, he will start from the bottom, but this is  
28 the recommendations as the Justice Shetty Commission said.

29 Then, My Lord, 12.120. "Judicial service of officers for providing weightage is the entire service  
30 rendered by them as Judicial Officers, right from the entry into judicial service up to the date  
31 of promotion to the cadre of District Judges." And so, the next, My Lord, is a summary of the  
32 above. And then what Your Lordships had held in this very case in 2002, 4 SCC 247, while  
33 considering the Justice Shetty Commission recommendations is set out, My Lord, at para 10.

1 "Experience has shown that there has been a constant discontentment amongst the members  
2 of the Higher Judicial Service in regard to the seniority in service. For over three decades, a  
3 large number of cases has been instituted in order to decide the relative seniority from the  
4 officers recruited from the two different sources, namely Promotees and Direct Recruits.

5 As a result of the decision today, there will be, in a way, three ways of recruitment to the Higher  
6 Judicial Service. The quota for promotion which we have prescribed is 50% by following the  
7 principle of merit cum seniority, 25% strictly on the basis of merit by Limited Departmental  
8 Competitive Examination, and 25% by direct recruitment. Experience has also shown that the  
9 least amount of litigation in the country where the quota system of recruitment exists, insofar,  
10 as seniority is concerned is where a roster system is followed. For example, there is, as per the  
11 rules of Central Government, a 40-point roster which has been prescribed which deals with  
12 quotas for Scheduled Caste and Scheduled Tribes. Hardly, if ever, has there been litigation  
13 amongst the members of the service, after the recruitment as per the quotas. The seniority is  
14 fixed by roster points and irrespective of the fact as to when a person is recruited.

15 When roster system is followed, there is no question of any dispute arising. The 40-point roster  
16 has been considered and approved by this Court in ***R. K. Sabharwal vs. State of Punjab***.  
17 One of the methods of avoiding any litigation and bringing about certainty in this regard is by  
18 specifying quotas in relation to posts and not in relation to vacancies. This is the basic principle  
19 on the basis of which the 40-point roster works. We direct the High Courts to suitably amend  
20 and promulgate seniority rules on the basis of the roster principle as approved by this Court  
21 in ***R. K. Sabharwal*** case as early as possible. We hope that as a result, thereof, there would  
22 be no further dispute in the fixation of seniority. It is obvious that this system can only apply  
23 prospectively except that where under the relevant rules seniority is to be determined on the  
24 basis of quota and rotational system, the existing relative seniority of members of the Higher  
25 Judicial Service has to be protected, but the roster has to be evolved for the future, appropriate  
26 rules and method will be adopted by the High Courts and approved by the States whenever  
27 necessary by so and so."

28 Then, My Lord, next. "We disapprove the recommendation of giving any weightage to the  
29 members of the Subordinate Judicial Service in their promotion to the Higher Judicial Service  
30 in determining seniority vis-à-vis Direct Recruits and the Promotees. The roster system will  
31 ensure fair play to all while improving efficiency in the service. Subject to the various  
32 modifications, all other recommendations of the Justice Shetty Commission are accepted." So,  
33 My Lord, the weightage system which was then recommended by Justice Shetty Commission  
34 was rejected. And the Court took the view that you will follow the 40-point roster for  
35 appointment as well as seniority. 40-point for roster and seniority.

1 Now My Lord, please see, one of the things that has arisen and will come later in the note is  
2 that let us say the 40-point rosters worked when District Judges Entry Level are appointed.  
3 Now to the next grade, let's call it, My Lord, the promotion because most High Courts call it  
4 promotion, although it is actually a functional upgradation as per Justice Shetty Commission.  
5 But let us call it promotion by merit cum seniority. My Lord, there are no seniority rules, so  
6 the 40-point roster remains. In other words, what is happening is that people are actually  
7 being promoted more on seniority than merit. Otherwise, My Lord, if it is merit cum seniority,  
8 then there has to be some change in seniority. The roster... 40-point roster will obviously be  
9 changed once My Lord we go from Entry Level to Selection Grade, from Selection Grade to  
10 Super Timescale if merit cum seniority is being applied. But in almost all States, it is virtually  
11 the same roster system which is being for the entire cadre. And one of the reasons for that is  
12 My Lord, that the merit, determination of merit, some High Court rules have pointed it out  
13 and I'll show it, is basically on ACRs. Now, most people have those ACRs. Two, Good, One,  
14 very good, etc., that. So, it all comes to seniority. So, the criteria for merit is determined in a  
15 manner that seniority becomes the main thing. I'll show that. It's in my submission, My Lord.

16 My Lord, would Your Lordships turn over the page to page 9? Thus, this Honourable Court, in  
17 terms disapprove the recommendation of the Justice Shetty Commission with respect to  
18 determination of *inter se* seniority of promoted District Judges and Direct Recruit District  
19 Judges and did not grant the promoted District Judges a weightage of one year for every five  
20 years of judicial service rendered by them, subject to a maximum of three years. Instead, this  
21 Honourable Court held their *inter se* seniority should be determined on the basis of 40-point  
22 roster as has been considered and approved in **R. K. Sabharwal**. In the same judgment this  
23 Honourable Court also held that the cadre of District Judges would be divided in the ratio of  
24 50%... 50 regular promotions as to 25 accelerated promotions, as to 25 Direct Recruits.

25 Thereafter, in **All India Judges Association** 2010 15 SCC 170, this Honourable Court  
26 altered the ratio from 50:25:25 to 65:10:25 for appointment to the cadre of District Judge.  
27 Recently, this Honourable Court, in **All India Judges Association** while relaxing the  
28 eligibility conditions for appearing in Limited Departmental Competitive Examination  
29 restored the ratio for appointment to the post of District Judge as 50:25:25 in the following  
30 manner. "We find that if the quota of LDCE is restored to 25% as originally recommended in  
31 the third **AIJA** case, which was reduced to 10% in the fourth **AIJA** case, it will provide an  
32 incentive amongst officers in the cadre of Civil Judge, Senior Division. It will also provide them  
33 with an opportunity to get accelerated promotion in the cadre of District Judge if they are  
34 meritorious and deserving. Another difficulty that has come to our notice is that sufficient  
35 number of candidates are not available for appearing in LDCE on account of requirement of

1 having five years' experience as Civil Judge, Senior division, which is prescribed as an  
2 eligibility criterion for appearing in the LDCE for the higher judiciary.

3 In some of the states, a judicial officer who completes about five years' service in the cadre of  
4 Civil Judge, Senior Division in normal course becomes entitled to be promoted in the cadre of  
5 District Judge. We have already framed Issue 2 dealing with this very conundrum which we  
6 are considering immediately after this issue. We find that in view of the answer that we  
7 propose for Issue 2, sufficient number of judicial officers from the cadre of Civil Judge, Senior  
8 Division would be available who would be eligible for appearing in LDCE. If in a particular  
9 year sufficient candidates are not selected from LDCE quota, it will be appropriate that such  
10 posts would revert back to the regular promotion quota based on merit cum seniority to be  
11 filled up in the same year.

12 Therefore, in such a case, we find that no adverse impact on the administration of justice would  
13 occur even if LDCE quota is increased to 25%. In our view, this, apart from avoiding any  
14 adverse effect on administration of justice due to sufficient number of seats not being filled up  
15 would also ensure that no prejudice would be caused to regular Promotees, and at the same  
16 time, the said exercise would provide an incentive to meritorious judicial officer if their merit  
17 deserves the same."

18 The next paragraph My Lord, Your Lordships have set out the time it takes. Now, this will also  
19 apply to our case that we are presently dealing with here. "We find that it will be appropriate  
20 to compare the position in some of the states with regard to average time taken by Civil Judge,  
21 Junior Division to be eligible for LDCE as against average time taken by Civil Judge, Junior  
22 Division to become a District Judge by view of regular promotion." In this respect, the chart  
23 was submitted extracted as under.

24 Now My Lord, please see Bihar. "Average time taken by Civil Judge, Junior Division to be  
25 eligible for LDCE is nine to ten years." Not very relevant for us, but the next one. "Average time  
26 taken by a Civil Judge, Junior Division to become a District Judge by regular promotion is  
27 nine to ten years. If you come to Himachal, My Lord, "The average time (b) by a Civil Judge to  
28 become a District Judge by regular promotion is 19 to 20 years." In Maharashtra, My Lord, it  
29 is 13 years. So, the reason I'm pointing this out is now we have seen the 99 position in the  
30 Shetty Commission Report. This is the 25 position which Your Lordships have set out. In  
31 Maharashtra, My Lord, average time taken by Civil Judge, Junior Division to become a District  
32 Judge by regular promotion, 13 years.

1 Next, My Lord, Manipur. "Average time taken by Civil Judge to become District Judge by  
2 regular promotion, 11 years. In Punjab, average time by Civil Judge to become District Judge,  
3 regular promotion, 15 years. Haryana, 12 years. Uttar Pradesh, nine to ten years." Now, what  
4 Your Lordship said was that in the context of LDCE, the time that you became eligible for  
5 LDCE and regular promotions was almost the same. Therefore, there was no need for... there  
6 was no... people were not appearing in LDCE. So therefore, Your Lordship reduced that time,  
7 but what I am presently placing before Your Lordships is the time it takes for a Civil Judge to  
8 become a District Judge is so long that again, My Lord, the age disparity will remain. And what  
9 that age disparity is, I'll show it to Your Lordships.

10 Then, My Lord, para 42 at the bottom of page 11. "As has been discussed hereinabove, the  
11 purpose behind providing a special quota for LDCE, is to enable meritorious Judicial Officers  
12 to get accelerated promotion and enter the cadre of District Judges at an earlier point of time  
13 than other less meritorious candidates. If a Judicial Officer even otherwise gets an entry in the  
14 cadre of District Judges, after completion of five years of service as Civil Judge, Senior  
15 Division, there will be no incentive available to him or her. As already discussed hereinabove,  
16 in some of the High Courts, a Judicial Officer gets into the cadre of District Judge through  
17 regular promotion itself after he or she completes five years' service as Civil Judge, Senior  
18 Division. Therefore, in our considered view, it will be desirable to modify the requirement to  
19 become eligible for LDCE, for the Higher Judicial Service and reduce the minimum number  
20 of years of service of experience as a Civil Judge, Senior Division from five to three years.

21 However, at the same time, we are also of the opinion that as recommended by some of the  
22 states, total number of years of experience for a Judicial Officer for being eligible for LDCE  
23 should be a minimum cumulative of seven years including service as Civil Judge, Junior and  
24 Civil Judge, Senior Division". So, this was in the context of saying that since you are taking the  
25 same time either way, you should reduce it. But what I am placing before Your Lordships is,  
26 please see the time taken for regular promotion. We are presently mostly concerned with the  
27 regular promotion here. That still remains.

28 Now, My Lord, the next heading is the 'Cadre of District Judges'. This is very short, My Lord.  
29 Just one page on that. "The Second National Judicial Pay Commission, in its report dated  
30 January 2020, recommended, having regard to the long passage of time since the  
31 recommendations were made by FNJPC, an undeniable fact that quite a number of District  
32 Judges are not reaching higher grades, this Commission is of the view that it would be  
33 appropriate and proper to increase the percentage of ceiling prescribed by FNJPC to a  
34 reasonable extent. Commission recommended Selection Grade and Super Timescale posts  
35 shall be increased by 10% and 5% respectively. This means that District Judges at Entry Level

1 shall be 50%, Selection Grade, 35%... Selection Grade, 35% and Super Timescale, 15% of the  
2 total cadre of strength of District Judges. Of course, the criterion of merit cum seniority shall  
3 continue to be applied for placing the District Judges in these two higher grades involving  
4 functional as well as financial upgradation. We recommend, accordingly, this  
5 recommendation if accepted, may be allowed to come into force from so and so."

6 Next, My Lord, para 16, Part 1, Volume 4. "The post of District Judges Selection Grades shall  
7 be increased to 35% of the cadre strength as against 25%, and District Judge Super Timescale  
8 shall be increased to 15% of the cadre strength as against 10%. It will be effective from 1.1.20."

9 Now, My Lord, these recommendations were considered by Your Lordships in 2024, 1 SCC  
10 526. And at para 74, this is what Your Lordships had held. "This Commission has  
11 recommended to increase the percentage of District Judges who will be entitled to District  
12 Judge Selection Grade and District Judge Super Timescale. The reasoning of the Commission  
13 is that due to limited percentage of Districts Judge Super Timescale and District Judge  
14 Selection Grade, many judges from larger states are unable to reach higher posts before  
15 retirement, even though they have spent considerable time in the District Judge cadre.

16 It is found that as of October 2019, only 1515 judges out of a cadre strength of 7382 District  
17 Judges, were getting the benefit of Selection Grade and Super Timescale. Recommendation of  
18 Commission that the Selection Grade and Super Timescale posts should be increased by 10  
19 and 5%, respectively on merits... merits acceptance. Essentially this would entail that District  
20 Judges at Entry Level shall be 50, Selection Grade, 35% and Super Timescale, 15%."

21 Now, My Lord, so, this was increased for the reason that judges should get an incentive to be  
22 in at least higher pay scale. And from there, My Lord, you move to the High Court. Now, it will  
23 be worthwhile to see, how many of these people... these judges, My Lord, reach Selection Grade  
24 and Super Timescale, if you are a Regular Promotee Judge coming from the Civil Judge, Senior  
25 Division and before that from Senior Judge, Junior Division cadre. That's 50% of the cadre,  
26 My Lord. We are dealing with 50% of the District Judge cadre, what are their opportunities to  
27 reach these three scales within the District Judge cadre. First scale, of course, is Entry Level,  
28 Selection Grade, and Super Timescale. Because that, I believe, is at the heart of what we may  
29 be placing before Your Lordship. Now, My Lord, according to us, the justification for that, we  
30 have tried to place at page 13 onwards, which is the need and requirement for a quota. We are  
31 saying that there should be a quota. What that quota shall be, I'll come to Your Lordships.

32 So, the first is the Justice Shetty Commission, My Lord. "As mentioned above, Justice Shetty  
33 Commission had noted that there was disharmony amongst Promotee Judges and Direct  
34 Recruit Judges in District Judge cadre, especially due to different average age at which

1 Promotee Judges, 45 to 50 years and Direct Recruit Judges, 35 to 40 years joined the cadre,  
2 which led to limited avenues for career advancement of Promotee Judges due to  
3 superannuation before being considered for the post of Principal District Judge or above. It  
4 was specifically for this reason that the Shetty Commission had recommended to grant the  
5 Promotee Judges a weightage of one year for every five years of judicial service rendered by  
6 them, subject to a maximum of three years.

7 However, the said recommendation was expressly rejected by this Honourable Court in 2002  
8 4 SCC 247. The Honourable Court instead recommended adopting 40-point roster to govern  
9 the *inter se* seniority. It is respectfully submitted that the 40-point roster system while  
10 determining the *inter se* seniority of District Judge and Promotee Judges at the time of joining  
11 the cadre does not remedy the problem of age gap at which the Direct Recruit Judges, 35 to 40  
12 years, and Promotee Judges, 45 to 50 years, join the cadre. The effective result of the 40-point  
13 roster system is that once the Promotee Judges superannuate to the higher age, the district...  
14 Direct Recruit Judges get clubbed together at the senior-most positions in the seniority of  
15 gradation list due to the relatively younger age, and this stagnates the career progression of  
16 Promotee Judges. Despite having 20 to 25 years or more of judicial experience, due to seniority  
17 as determined by roster point system, Promotee Judges do not fall within the zone of  
18 consideration for being appointed as Principal District Judge."

19 So, what this para is essentially saying is because they are at a higher age, they'll obviously  
20 superannuate much earlier, reach the age of 60 much earlier. So, My Lord, because they may  
21 be, let us say, senior to a Direct Recruit Judge, but the Promotee Judge will retire. The next  
22 Promotee Judge will also retire. So, the top of the cadre will have direct recruit, direct recruit,  
23 direct recruit, direct recruit. And My Lord, then when the question comes for appointment,  
24 whether to the High Court or even to the next higher grade, it will be those people who will be  
25 taken into consideration. I've put a chart in the next page. I'll show that to Your Lordships.

26 Para 20, My Lord. "The post of Principal District Judge in some states, others only have the  
27 post of District Judge Super Timescale *per se* is not a promotional post itself, but an  
28 administrative post where a Judicial Officer from among the senior judges in the District  
29 Judge cadre is appointed by respective High Court for administrative efficiency and  
30 management of a judicial district. Promotee District Judges with adequate judicial experience  
31 may not even fall within the zone of consideration for appointment to the post to Principal  
32 District Judge. Creation of such a quota will not only be beneficial to Promotee District Judges,  
33 but will be equally beneficial to Direct Recruit Judges who in several other states have been  
34 found to be not adequately represented at the senior post in the cadre of District Judge. Having

1 a quota for Promotee Judges and Direct Recruits will ensure that Judicial Officers coming  
2 from both streams have equal opportunity of progressing and gaining career advancement."

3 So, My Lord, we are saying that 25% plus 50% is the Promotee Judges. 50% regular, and 25%  
4 LDCE, and 25% Direct Recruits. Now, please see, the way I've put it or tried to put it to see  
5 how the quota helps everybody. One stream should not get the benefit, but both can get the  
6 benefit together is the way I'm trying to put it, My Lord.

7 The next page, My Lord. "The need and requirement of quota in the cadre of District Judges  
8 may also be examined from the data on record provided by various High Courts." So, this is  
9 today's position. "In certain states, it has been noted that an anomalous situation has arisen  
10 as per seniority gradation list of District Judges, wherein it has been noted that the senior-  
11 most District Judges are found to be mostly Direct Recruit District Judges, thereby leading to  
12 a lopsided situation, where although the overall cadre strength of District Judges is found to  
13 be in the ratio of 50:25:25, yet the post of Principal District Judge/District Judge Super  
14 Timescale is occupied mostly by Direct Recruit District Judges. And Promotee District Judges  
15 are not adequately represented at the post of Principal District Judge. This happens mostly  
16 due to average younger age of Direct Recruit District Judges at the time of appointment to the  
17 cadre vis-à-vis the age of the Promotee District Judges."

18 So this is exactly what Justice Shetty pointed out in 1999, exactly the same. Now, please see  
19 this chart, My Lord. "The following chart shows the difference in average age at the time of  
20 appointment of Direct Recruit Judges and Promotee District Judges." Now My Lords, Your  
21 Lordship will see 35 in Andhra, 35 to 40... sorry.

22 **JUSTICE K. VINOD CHANDRAN:** Kerala, you have said 49 is the direct entry position.

23 **SIDDHARTH BHATNAGAR:** Sorry, My Lord?

24 **JUSTICE K. VINOD CHANDRAN:** The Direct Entry District Judges, they get into the  
25 service at 49.

26 **SIDDHARTH BHATNAGAR:** Right.

27 **JUSTICE K. VINOD CHANDRAN:** In Kerala, now there are at least five High Court Judges  
28 who were direct entry people who are at this age, 49.

29 **SIDDHARTH BHATNAGAR:** Oh, I see. No, I've just given the average. Maybe...

30 **JUSTICE K. VINOD CHANDRAN:** This is not correct.

- 1 **SIDDHARTH BHATNAGAR:** So, I'll just recheck it. This is my own... My Lord, I've...
- 2 **JUSTICE K. VINOD CHANDRAN:** It must be 39, 40.
- 3 **SIDDHARTH BHATNAGAR:** Just check out the... My Lord, I'll just quickly check. May I...
- 4 **JUSTICE K. VINOD CHANDRAN:** Same thing with Bihar.
- 5 **SIDDHARTH BHATNAGAR:** Let us see Bihar, My Lord. Bihar is not...
- 6 **JUSTICE K. VINOD CHANDRAN:** Bihar is not seen from here.
- 7 **SIDDHARTH BHATNAGAR:** My Lord, whoever has provided the data, I've put it. Rest, we  
8 have not been able to. But My Lord, just one thing to be added here. When Your Lordships are  
9 seeing this....
- 10 **DINESH DWIVEDI:** This is the right. In Bihar, it takes 17 years to become District Judge.
- 11 **JUSTICE K. VINOD CHANDRAN:** For the Promotees?
- 12 **SIDDHARTH BHATNAGAR:** For Promotees.
- 13 **DINESH DWIVEDI:** 17 years to become...
- 14 **JUSTICE K. VINOD CHANDRAN:** No. no. I am talking about the Direct Recruits.
- 15 **SIDDHARTH BHATNAGAR:** My Lord, I am quickly checking the Kerala Affidavit. Maybe  
16 it's a mistake. But one thing... Your Lordships will just note one thing here. The figures are, I  
17 think, more or less correct. But My Lords, when we come to the 3rd, 4th column. Average age  
18 of appointment to District Judge Promotee Judges, please add to this three years. Because  
19 now Your Lordships have said that you have to have three years as an advocate before you  
20 even take the examination. This data has come, this data is before this requirement has come  
21 into the picture.
- 22 **JUSTICE SURYA KANT:** 53 will become 56.
- 23 **SIDDHARTH BHATNAGAR:** Now, My Lord, you add three years to it. Your Lordships'  
24 judgment of 2025 May, when it was discussed at great length and the Bar Council of India also  
25 said, and all the High Courts said that...
- 26 **CHIEF JUSTICE B.R. GAVAI:** Almost all the High Courts.

1 **SIDDHARTH BHATNAGAR:** Every High Court said that you just... except one or two,  
2 Sikkim etc., that you just can't have untrained, My Lord, people without any advocacy  
3 experience, becoming civil judge, deciding life and liberty. And so, Your Lordships then mulled  
4 over whether it should be two or three years. And Your Lordships said three years. So now, in  
5 this second last column, you will have to add... My Lord, Your Lordships will have to add three  
6 years.

7 **JUSTICE VIKRAM NATH:** What does this say?

8 **SIDDHARTH BHATNAGAR:** My Lord, I'll just read that Affidavit of the Kerala High Court.  
9 I'm sorry, I've taken it from here. I'm reading it, My Lord from here with Your Lordships'  
10 permission. "Average age of judges presently serving in the cadre of district and sessions  
11 appointed by promotion from the cadre of Civil Judge, Senior Division is 53 years. While the  
12 average age of judges directly recruited in the cadre is 49 years." So, they've set an affidavit, it  
13 may be...

14 **JUSTICE K. VINOD CHANDRAN:** It has said that the average age of judges now serving  
15 is 49.

16 **SIDDHARTH BHATNAGAR:** Yes.

17 **JUSTICE K. VINOD CHANDRAN:** Not recruitment.

18 **SIDDHARTH BHATNAGAR:** Correct, correct. Your Lordships are right. That's a mistake,  
19 yes.

20 **CHIEF JUSTICE B.R. GAVAI:** See, we have three of them who have personal knowledge.  
21 One on this side and two on the other side.

22 **SIDDHARTH BHATNAGAR:** My Lord, I accept my mistake. When going through so many  
23 affidavits, sometimes a little bit of... but all I'm saying is for this chart, please My Lords, while  
24 considering this, add three years in the second last column. That will have to... Your Lordships  
25 will have to add. And minimum three, because we are assuming that a person after,  
26 immediately after three years, becomes a Civil Judge, Junior Division. So, minimum three,  
27 Your Lordships add. My Lord, just come into the next page, 16. My Lord, my apologies for that.  
28 I'll just correct it. Affidavits keep coming and you quickly just sometimes write, and this  
29 doesn't really...

30 **JUSTICE K. VINOD CHANDRAN:** Yes, [UNCLEAR].

1 **SIDDHARTH BHATNAGAR: Yes.** Luckily, Your Lordships have that experience and Your  
2 Lordships immediately corrected me, so. But in fact, what Your Lordships are saying that the  
3 difference would be more than what I've indicated, not less. So, it's...

4 **CHIEF JUSTICE B.R. GAVAI:** There can't be an entry below 35.

5 **SIDDHARTH BHATNAGAR:** Yes. Minimum is 35. My Lord, just see. May I just now that  
6 we are mulling on this issue... My Lord, one of the examples given by my...

7 **JUSTICE SURYA KANT:** This entire text which you are referring to, this only highlight the  
8 anomalous situation.

9 **SIDDHARTH BHATNAGAR:** Correct.

10 **JUSTICE SURYA KANT:** According to you that a kind of exposé discriminatory for  
11 anomalous situation between Direct Recruits versus Promotee.

12 **SIDDHARTH BHATNAGAR:** My Lord.

13 **JUSTICE SURYA KANT:** Now those were departmental, this limited...

14 **SIDDHARTH BHATNAGAR:** LC.

15 **JUSTICE SURYA KANT:** Entry, 25%, to whom we can just, loosely we can call them semi-  
16 direct recruit.

17 **SIDDHARTH BHATNAGAR:** Right, My Lord. Because they are getting a... yes, advantage.

18 **JUSTICE SURYA KANT:** So, they still might have an edge or advantage of seniority, might,  
19 depending upon that, what time they complete and what time they get... acquire eligibility and  
20 enter.

21 **SIDDHARTH BHATNAGAR:** That's right.

22 **JUSTICE SURYA KANT:** Now in this entire anomalous situation, what is the ultimate  
23 recommendation for the...?

24 **SIDDHARTH BHATNAGAR:** So, would Your Lordships want me to come to that first and  
25 then come back to it? Very well, I can mention that. But before I go do that, can I just mention  
26 two aspects, which, My Lord, since Your Lordships are on LCE right now, just now, and also  
27 recently, we've had a judgment of a Constitution Bench, which says that even serving Civil

1 Judges, after seven years can take the Direct Recruit Examination, because the experience  
2 there is actually much more than that of an advocate of seven years. That's what Your  
3 Lordships have said. So, My Lord, one of the points that my learned friends have said, and it's  
4 a point worth, My Lord...

5 **JUSTICE SURYA KANT:** Therefore, balancing of seniority...

6 **SIDDHARTH BHATNAGAR:** Yes.

7 **JUSTICE SURYA KANT:** ...is also now important because of that judgment.

8 **SIDDHARTH BHATNAGAR:** Right.

9 **JUSTICE SURYA KANT:** If you give so much incentive to the seniority and for the Direct  
10 Recruits...

11 **SIDDHARTH BHATNAGAR:** Correct.

12 **JUSTICE SURYA KANT:** ...our Junior Cadre Officer will start only working for competitive.

13 **SIDDHARTH BHATNAGAR:** And they will not be interested in deciding cases, they will  
14 study for the examination.

15 **JUSTICE SURYA KANT:** We will have a crisis in Junior Division Level.

16 **SIDDHARTH BHATNAGAR:** Exactly. My Lord, so as you will spend seven years preparing  
17 for the District Judge, Direct Recruit Examination rather than doing... because then you are  
18 not bothered about your ACRs, etc., because you're only interested in taking the Direct Recruit  
19 Examination. But My Lord, please see two examples that I'm giving. One of the things that has  
20 been pointed out, it's certainly something I should mention straightaway, is that LCE, which  
21 Your Lordships has pointed out, and even the Direct Recruitment now gives some kind of  
22 equivalence to other people, which would include Promotee Judges. Now, the way they've said  
23 is this, that let us say a case where a person graduates at the age of 23 years, let us take an  
24 example from law, law college.

25 Then that person will spend three years practicing as an advocate as per Your Lordships'  
26 judgment, so 26 years. And then, My Lord, as per Your Lordships' judgment, LDCE, they can  
27 take after seven years minimum, so, let us say 26 plus 7, 33. So, they are saying that at the  
28 minimum age, if you clear everything in the first round, you will at the age of 33 itself, become  
29 eligible to become a District Judge.

1 **JUSTICE K. VINOD CHANDRAN:** No, 35 is the minimum.

2 **SIDDHARTH BHATNAGAR:** But so... 33, but you take it to... so, therefore... therefore, you  
3 have no disadvantage. I was coming to that. 33 through LDCE. 33 through LDCE, but let us  
4 say you are appointed at 35 only. So, the argument is there's no disadvantage. I'm just dealing  
5 with that argument. Next is, My Lord, let us take a case of a Civil Judge, who after seven years,  
6 as per Your Lordships' judgment in the review in *Dheeraj Mor* takes the examination and  
7 clears it. So, My Lord, in his case also, he would have joined at the age of 23. Let us say, My  
8 Lord, finish law at 23, three years of advocacy practice, and then seven years, so that takes it  
9 to 35.

10 **CHIEF JUSTICE B.R. GAVAI:** Even in their case...

11 **SIDDHARTH BHATNAGAR:** Yes.

12 **CHIEF JUSTICE B.R. GAVAI:** ...they can't get it before 35.

13 **SIDDHARTH BHATNAGAR:** They can't get it before 35, but the argument that is being  
14 made is that, therefore, there are enough avenues for you through LDCE or through for a Civil  
15 Judge to take the Direct Recruitment Examination to come in at the age of 35. Now, the answer  
16 to this... let me give the answer... sorry.

17 **CHIEF JUSTICE B.R. GAVAI:** Their contention would be, whoever are meritorious  
18 amongst the Promotees, they would have already made it by either through LDCE or through  
19 the direct recruitment.

20 **SIDDHARTH BHATNAGAR:** Right. So, that is one of the arguments. Now, but please see  
21 the other side of it. 50% of the entire cadre is Promotee District Judges. We are dealing with  
22 25% LCE and assuming that the entire 25% is filled up. Your Lordships have seen that in that  
23 matter, when Your Lordships heard, hardly anyone was taking LCE. Now they will take  
24 because of the incentive. And you are assuming that every Civil Judge after seven years will  
25 clear the District Judge Examination. So, for 50%... we are dealing with the 50% of the cadre  
26 here. So, for them, the seniority and promotion is a very important aspect, that's what I'm  
27 trying to say. So, to say that there were opportunities, even after taking those opportunities,  
28 50% of the cadre will still remain regular Promotee cadre. So, Your Lordships may think of  
29 that, that's what I'm trying to say.

30 So, I'll tell Your Lordships what my suggestions are, and then I'll come back to this. Would  
31 Your Lordships come, My Lord, to page 48. I've dealt with the case... of the same, 48. I've given

1 four suggestions in the alternative, etc., tried to be as even handed and fair as possible. My  
2 Lord, just have a look at it. May I read Suggestion 1 at page 48 (i). "The additional experience  
3 as Judicial Officers constitutes a reasonable and justified classification on the basis of which  
4 Promotee District Judges can be classified as a category who ought to be granted a quota for  
5 their effective representation at the post of District Judge Selection Grade, District Judge  
6 Super Timescale, Principal District Judges. Creation of such a quota satisfies the twin test of  
7 classification based on intelligible differentia and reasonable nexus of such classification with  
8 the object sought to be achieved. Therefore, creation of such quotas permissible in terms of so  
9 and so. It is thus suggested that for appointment to the post of so and so..." Now, My Lord,  
10 here, I'll just make... there's a nuance here, which I'll just point out. "...to the post of District  
11 Judge Selection Grade, District Judge Super Timescale, Promotee Principal District Judges, a  
12 quota of 1:1 for Promotee District Judges and Direct Recruit District judges may be created.  
13 Principal of merit cum seniority maybe, can then be applied within the said quota."

14 So what the suggestion, finally is that even for a 25% direct recruitment, you have a 50% quota,  
15 and for that 75% entire Promotee cadre, you have 50%. That Your Lordships can, of course,  
16 make it 75:25:25 also; some of the... my learned friends on this side are arguing that. But here  
17 Your Lordships will have to see one nuance, that this District Judge cadre has 50% judges at  
18 Entry Level, 35% at Selection Grade and 15% at Super Timescale. So, if we... let us assume for  
19 a minute that is 1:1 quota is to be applied and we apply it to both Selection Grade and Super  
20 Timescale, then there will be no Entry Level Direct Recruit District Judge left because 17.5%  
21 plus 7.5% will go into the next two posts. So, My Lord, my suggestion here, therefore, will be  
22 to have that at this Super Timescale.

23 **CHIEF JUSTICE B.R. GAVAI:** Only.

24 **SIDDHARTH BHATNAGAR:** I hope I made myself clear, My Lord. Let's say there are 100  
25 posts. 100 posts in the cadre, so there'll be 50, My Lord, Entry Level. There will be 35 Selection  
26 Grade, and 15, My Lord, Super Timescale.

27 **JUSTICE SURYA KANT:** This 25% Departmental Examination...

28 **SIDDHARTH BHATNAGAR:** Yes.

29 **JUSTICE SURYA KANT:** The 25% quota is only meant for as an incentive for the officers  
30 who we suppose that they are meritorious enough, that they can through competitive exam,  
31 they can occupy those 25%. What will be the incentive for them left if you apply this ratio in  
32 Principal District Judge or Selection Grade, and...

1 **SIDDHARTH BHATNAGAR:** No, because they will still be... they are still Promotees. Of  
2 course, no, the incentive...

3 **JUSTICE SURYA KANT:** Therefore, within... why they should compete for 25%?

4 **SIDDHARTH BHATNAGAR:** No, so...

5 **JUSTICE SURYA KANT:** If ultimately, this position needs to be occupied only on the basis  
6 of length of service, then what is the incentive left for them?

7 **SIDDHARTH BHATNAGAR:** For the LC?

8 **JUSTICE SURYA KANT:** 25%.

9 **SIDDHARTH BHATNAGAR:** No. Then, My Lord, you will be senior to a regular Promotee  
10 in any case, in the seniority list. You'll have a quota, yes, but your seniority will be higher.

11 **JUSTICE SURYA KANT:** Then are you conceptualising a situation where the senior-most  
12 person in the cadre of District Judge, though he is senior most, but he will not get a Super  
13 Timescale or he will not get a Selection Grade.

14 **SIDDHARTH BHATNAGAR:** No, I'm not visualising that. In fact, I'm saying the opposite.  
15 I'm saying the senior most, suppose, My Lord, the LCE person... let's say My Lord, they are  
16 two Promotees appointed on the same day. One of them clears LCE at a younger age.

17 **JUSTICE SURYA KANT:** If on the same date they are promoted, nothing difficult, because  
18 then you can say that Promotees will have and as over the department promoted Promotee,  
19 what you say. Then he can be assigned seniority. He can have kind of roster point. You give  
20 first point to the Promotee, second to the...

21 **SIDDHARTH BHATNAGAR:** That's right. That's how the roster is also, yes.

22 **JUSTICE SURYA KANT:** Third maybe to the Direct Recruit. That is one possibility. But  
23 what will be the incentive left for an officer, who'll say, why should I work hard, compete and  
24 try to qualify the exam when eventually in terms of seniority or in terms of monetary benefit  
25 of a higher pay scale, I'm going to lose.

26 **SIDDHARTH BHATNAGAR:** The benefit will be, in my respectful submission this, that  
27 suppose there are two Civil Judges, Senior Division, one is junior to the other. The junior one  
28 passes the LCE Examination. He comes directly into the cadre of District Judges. He becomes

1 senior to the regular Promotee when he comes in. So, My Lord, his seniority will be higher in  
2 the cadre in any case. The quota doesn't... it doesn't affect seniority.

3 What I was saying, just, My Lord, just to come back to what Your Lordships very rightly put to  
4 me. Firstly, My Lord, at the Entry Level, we are not fixing a quota. So, the LCE will anyway be  
5 senior. So, Entry Level, My Lord, will be as of as per roster as My Lord said. Only at Super  
6 Timescale will, My Lord, the Promotees get. Now that's one. Secondly, My Lord, I have just in  
7 fairness mentioned 1:1 as an Amicus. But suppose some of my learned friends, etc., are saying,  
8 the quota should be 2:1:1. That is to say, two for regular Promotees, one for LCE and one for  
9 Direct Recruit. Suppose that is accepted by Your Lordships, then LCE again will get...

10 **JUSTICE VIKRAM NATH:** But ultimately, 2: 2 only.

11 **SIDDHARTH BHATNAGAR:** Yes. I'm saying that, but ultimately, I'm saying that the  
12 regular Promotees are the ones who suffer the most because being maximum in the cadre. My  
13 Lord, coming to Suggestion 2, which is the next page, page 49. Now here My Lord, it's the same  
14 as Suggestion 1, except here we are saying something a little different. Alternatively, "Zone of  
15 consideration for appointment to the post of District Judge selection." So, please read this.  
16 "Zone of consideration for appointment of District Judge, Selection Grade and District Judge,  
17 Super Timescale should comprise of 50% officers from directly recruited District Judges and  
18 50% from Promotee District Judges. Thereafter, appointment would be made on the  
19 recommendations of respective High Courts on the basis of merit cum seniority. Thus, in the  
20 zone of consideration, 50% shall be senior most Promotee District Judges and 50% shall be  
21 senior-most Directly Recruited Judges". Now, suppose there are ten posts, so most High  
22 Courts have a system where the zone of consideration is three times. So, let us say 30 officer...  
23 30 judges will be considered. Now, out of which my suggestion is that in this zone of  
24 consideration, you will have 15... 15 from the senior-most Promotee and 15 from the senior-  
25 most directly recruited. After that, if the High Court feels that all tens should be Directly  
26 Recruited Judges appointed to the next grade, that is for the High Court to decide on merit  
27 cum seniority or 5:5 or ten is to whatever.

28 But this is the zone of consideration argument, so that at least somebody comes within the  
29 zone of consideration. Otherwise, they are not in the zone of consideration. If three Officers to  
30 be considered for one post, then obviously because of seniority, etc., they're never in the zone.  
31 This will bring them within the zone. This is the second argument. So, this can be an alternative  
32 to the first, in case Your Lordships feel that this is the better one.

1 **JUSTICE JOYMALYA BAGCHI:** Mr. Amicus, your suggestion, second suggestion, in fact,  
2 will create a cadre within a cadre.

3 **SIDDHARTH BHATNAGAR:** Why is that, My Lord? I'm sorry.

4 **JUSTICE JOYMALYA BAGCHI:** Because you are saying that the 50%... let's say there are  
5 ten candidates eligible for a Super Time or Selection Grade, it would be five from the  
6 Promotees and five from the Direct Recruits. So, what would happen is at the District Judge  
7 Entry Level, it's a common cadre. And if the second suggestion is adopted, then we are creating  
8 a separate stratification, a cadre within the cadre of Direct Recruit Judges as District Judges  
9 and Promotee Judges as District Judges.

10 **SIDDHARTH BHATNAGAR:** With great respect, what I was trying to say is that they'll  
11 only be in the zone of consideration for being considered. Appointment can be of either of  
12 them, but they'll be the same. The cadre remains the same.

13 **JUSTICE JOYMALYA BAGCHI:** For that the list of seniority will be a different list of  
14 seniority for the District Judges as Direct Recruit District Judges and Promotee District  
15 Judges. That is your proposal as far as...

16 **SIDDHARTH BHATNAGAR:** No. So, My Lord, that is not exactly my proposal. I'm saying  
17 that in the same scenario...

18 **JUSTICE JOYMALYA BAGCHI:** That will boil down to that.

19 **SIDDHARTH BHATNAGAR:** Correct. Now, but that is exactly what in my fourth  
20 suggestion, the High Court of Andhra Pradesh has said exactly this.

21 **JUSTICE JOYMALYA BAGCHI:** We have seen it.

22 **SIDDHARTH BHATNAGAR:** Exactly this, My Lord.

23 **JUSTICE JOYMALYA BAGCHI:** But the area of consideration would be, do we create a  
24 stratification in the District Judge cadre, it is a uniform cadre itself. We can definitely consider  
25 your suggestion about quota in respect of the functional seniority...

26 **SIDDHARTH BHATNAGAR:** That's the first.

27 **JUSTICE JOYMALYA BAGCHI:** ...functional position scales, but to create the cadre as  
28 groups, will make it... not an uniform, but a stratified cadre of this.

1 **SIDDHARTH BHATNAGAR:** No, I understand exactly what Your Lordships are saying  
2 because then you are mixing up seniority in that sense. But my suggestion here is this is the  
3 only way in which if you are leaving it to the High Court to appoint a person and...

4 **JUSTICE SURYA KANT:** This will also lead to a very anomalous situation, where a person  
5 because of this cap of ten, picking up from Promotee, ten, picking up from Direct Recruit.

6 **SIDDHARTH BHATNAGAR:** I'm not saying that.

7 **JUSTICE SURYA KANT:** No, zone of consideration.

8 **SIDDHARTH BHATNAGAR:** Zone of consideration.

9 **JUSTICE SURYA KANT:** It's for zone of consideration.

10 **SIDDHARTH BHATNAGAR:** Yes.

11 **JUSTICE SURYA KANT:** Ten, you pick up from this side. Ten, you pick up from this side.  
12 You merge them, consider them, then you promote them directly.

13 **SIDDHARTH BHATNAGAR:** Whoever you want.

14 **JUSTICE SURYA KANT:** So, maybe that throughout till the question of designation or  
15 promotion as per the District Judge come. An officer who has been throughout junior will  
16 become head of the District Judiciary, and all persons who have been throughout senior to  
17 him will be under him.

18 **SIDDHARTH BHATNAGAR:** My Lord, that may not necessarily be the case, because the  
19 High Court will consider it when we're making that appointment.

20 **JUSTICE SURYA KANT:** If you restrict the zone of consideration, then nothing is left for  
21 the High Court. Then it depends on the.... if you qualify, then you can't stop him.

22 **SIDDHARTH BHATNAGAR:** I am saying that presently the zone of consideration is such  
23 screwed in the other way, for that Your Lordship may just come to page 16. Just have a look at  
24 the seniority list.

25 **JUSTICE SURYA KANT:** Probably you want to suggest the High Court will have to then...  
26 very adverse responsibility of seeing that in this present division we are posting him and no  
27 person junior to him should be posted there. This will lead to...

1 **SIDDHARTH BHATNAGAR:** No, no, that I'm not saying. But eventually this is... so I'll just  
2 show to Your Lordships of how it works, in practice what the problem is. I'll just show that  
3 immediately after I finish these suggestions. I'll come to the chart. This is a chart that I will  
4 show after this. The reason I've come out with this, that's just a suggestion for Your Lordships  
5 to consider. The third suggestion is, in fact, what the Justice Shetty Commission had said. So,  
6 I'll read it out. "Alternatively, it is suggested that this Honourable Court may accept the  
7 recommendations of the Justice Shetty Commission, and grant weightage to promote District  
8 Judges for experience in terms of one year seniority for every five years of judicial service  
9 subject to a maximum of three years. It is further submitted that these additional years of  
10 seniority may be considered as service in the District Judge cadre. Thus, if a Promotee District  
11 Judge has been granted three-year seniority as per aforesaid criteria, Promotee District Judge  
12 will require only two years of service in the District Judge cadre for being considered for the  
13 grant of Selection Grade." This is the example I've given. "It is stated acceptance of  
14 recommendation of Shetty Commission will require modifying or dispensing with 40-point  
15 roster system for seniority in so and so. Thus, it is respectfully submitted... this it was  
16 respectfully submitted will address the issue of age disparity and additional experience of  
17 Promotee District Judge vis-à-vis District Judge, Direct Recruit District Judge." So this is  
18 exactly what Justice Shetty had said in 1999.

19 The next one is what My Lord has put to me, so I'll read that also. Four. "Alternatively, this  
20 Honourable Court may consider the recommendation made by Committee of the Honourable  
21 High Court of Andhra Pradesh, which had recommended three separate seniority lists. In  
22 respect of Promotee District Judges by regular promotion, Promotee District Judge LDCE,  
23 plus Direct Recruit District Judge in the ratio of their overall cadre strength of 50:25:25 and  
24 the selection of such higher posts in the cadre of District Judges be made on basis of such  
25 seniority lists." So, these are the four... one has come from the Andhra High Court, one is  
26 Justice Shetty, two I have put in as my suggestions.

27 Now My Lord, just to come back to page 16. I wanted to show Your Lordships a chart as to  
28 what the issue comes.

29 **CHIEF JUSTICE B.R. GAVAI:** Page?

30 **SIDDHARTH BHATNAGAR:** My Lord, 16. My Lord, we have been able to cull out the  
31 seniority list of some of the High Courts. And here, Your Lordships will see let's see, My Lord,  
32 Kerala, this is the seniority list. So, Kerala has Promotee District Judge, Promotee, Promotee.  
33 So fair number of Promotees at the top. In Patna, if Your Lordship sees, District, direct recruit,  
34 direct recruit, direct recruit. Then, My Lord, some Promotees. Then direct recruit and then

1 everyone, direct recruit. So here we feel that if... all these Promotees will be older in age to the  
2 Direct Recruits and they will all retire before these other Direct Recruits and the entire cadre  
3 at the top will become Direct Recruits. That is one other thing. Similar...

4 **JUSTICE K. VINOD CHANDRAN:** In Patna that happened because 94 District Judges  
5 were taken at one go.

6 **SIDDHARTH BHATNAGAR:** It is mentioned in the Affidavit, I'll show that. So, that would  
7 be the reason, yes. The reason is not stated, obviously, in the Affidavit.

8 **JUSTICE K. VINOD CHANDRAN:** For seven years, there was no recruitment at all.

9 **SIDDHARTH BHATNAGAR:** Yes, My Lord, right.

10 **CHIEF JUSTICE B.R. GAVAI:** In Bombay, I think, out of 21, who was appearing the other  
11 day, 18 or 19 are direct.

12 **SIDDHARTH BHATNAGAR:** Yes. So all I'm trying to say is that this clubbing at the top is  
13 the problem. And the clubbing will happen because even if a senior Promotee Judge is there,  
14 because of a ten-year age gap, he'll retire earlier or a five-year age gap, he will retire early. So  
15 that's the problem. My Lord, turning to page 17, I've just culled out a few paragraphs of  
16 affidavits on both sides saying against and for, both. Now, if Your Lordship looks at 17, this is  
17 what State of Uttar Pradesh is saying. Para 25(a). "In the State of Uttar Pradesh, there are 70  
18 District and Session Judges, of which 58 are Direct Recruit District Judges." So My Lord, these  
19 are actually Principal District Judges. Although they've called them, but they should be  
20 principal. "58 are Direct Recruit District Judges, 12 are Promotee District Judges. High Court  
21 of Allahabad in its affidavit stated as follows. Out of 257, 137 officers are Promotee Judges by  
22 regular promotion. Two officers are Promotee Judges of LDCE. 118 are Direct Recruits. Out of  
23 100 seniormost officers, 17 are Promotee Judges regular promotion, two are Promotee Judges,  
24 LDCE, 81 are Direct Recruits. Seniormost Promotee Judge features at Serial No. 29 in the  
25 seniority list. Therefore, posts at Serial No. 1 to 28 are occupied by Direct Recruit."

26 The Court is saying it. Now, My Lord, similarly for Bihar, Your Lordships had said there's a  
27 reason for it, but anyway I'll place it. "Out of 622 occupied posts, 91 Judicial Officers are  
28 working as Principal District and Session Judge, consisting of five Promotees and 86 Direct  
29 Recruits. As per seniority list and detail chart, there are 20 Direct Recruit Judicial Officers  
30 presently below the 91 Judicial Officers working in the rank of Principal District and Sessions  
31 Judge, meaning thereby, that after the retirement of five Promotee Judges in the rank of  
32 Principal District and Session Judge, all post in the said rank will be occupied by Direct Recruit

1 District Judges." This is what this is. Then, My Lord, some other... I will not read all of them,  
2 but just, if Your Lordships would just come to Andhra, because Andhra gave that suggestion.  
3 So, let's see what they've said fully.

4 That's at page 19, para (j). "The High Court of Andhra as stated in its affidavit as follows.  
5 Whereas candidates appointed to the post of District Judge by direct recruitment are generally  
6 in the age group of 35 to 40, thus Promotee Officers always become juniors of Direct Recruits.  
7 Despite having put in more than 25 years of service, Promotee Officers retire in the cadre of  
8 District Judges as they are junior to Direct Recruits and do not fall in the zone of consideration,  
9 and the judiciary is deprived of experience at High Court level. As per present seniority list,  
10 first 17 members were selected as District Judges by direct recruitment. And considering their  
11 age, the Promotee District Judges will not get the opportunity to be considered for the post of  
12 High Court judges even though they have put in 25 years of service. In the light, thereof, the  
13 Committee has made the following recommendation.

14 Distinct seniority list should be maintained for each category of District Judges. One, direct  
15 recruitment, two, recruitment by LDCE, three recruitment by promotion. Recommendations  
16 for appointment of High Court Judge should be made within these specified categories. Initial  
17 appointment ratio for District Judges shall be consistently applied for subsequent  
18 appointment as Principal District Judges and further for High Court. The Committee  
19 unanimously resolved to recommend that 50% of appointments to the High Court from in-  
20 service officers should be drawn from the category of District Judges who were initially  
21 appointed in the cadre of Civil Judge, Junior Division, ensuring adequate representation."

22 This is not the issue today before Your Lordships. But this is what the High Court has said  
23 looking at this skewed ratio there, this is what the High Court committee itself is saying. This  
24 is not one of my suggestions or this is not even the issue here today. But I'm just telling,  
25 pointing it out.

26 **CHIEF JUSTICE B.R. GAVAI:** You have told that even in the State of Tamil Nadu also,  
27 there is a similar issue.

28 **SIDDHARTH BHATNAGAR:** Tamil Nadu. I'll just show it, My Lord. I think mentioned  
29 here some just... just, one minute, My Lord. Tamil Nadu in their affidavit have said that the 37  
30 Principal District Judges, 27 are Promotees and ten are Direct Recruit, that they've said. At  
31 page 22, I've summarised it. In fact, page 20 onwards, this is a view of some of the other states  
32 who have said that either the ratio is the same or Promotees are more. So, that also I've put in.  
33 So, My Lord, Chhattisgarh, Gujarat, Himachal, Jharkhand, Madhya Pradesh, Mizoram,

1 Nagaland, Tamil Nadu, Sikkim, Uttarakhand, West Bengal, Delhi, and Jammu and Kashmir.  
2 So, they are saying that in their states there are sufficient number, if not more Promotees.  
3 They've said that, so I put that also for Your Lordships' consideration.

4 Now, My Lord, the other submission which I had made which has been now set out at page 23  
5 bottom, My Lord. I'm just skipping over a few paragraphs because that we have already, My  
6 Lord, covered that. My Lord, para 31, at page 23. "However, on account of the age by which  
7 Promotee District Judges are appointed to the post of District Judge Entry Level, they suffer  
8 disadvantages in further promotions within the cadre. This is evident from the following. One,  
9 first, criteria considered by the High Court for promotion to District Judge Entry Level to  
10 District Judge Selection Grade is at least five-year service as District Judge Entry Level. If a  
11 Promotee District Judge is already appointed at an age far more than Direct Recruit Judge, by  
12 the time a Promotee District Judge completes five years to come within the zone of  
13 consideration, the Direct Recruited Judge of a similar age would have already completed five  
14 years and be within the zone of consideration for District Judge Selection Grade or even  
15 District Judge Super Timescale. Those selection and promotion in the cadre/promotion in the  
16 cadre is on the basis of seniority cum seniority to be within the zone of consideration is also a  
17 facet of seniority, since the said zone of consideration depends on the number of vacancies.  
18 For instance, with respect to Delhi High Court, the zone of consideration is as follows."

19 Delhi has, My Lord, 1:5, for one vacancy. For two, it is 8,3,10 etc. And for Assam, Manipur,  
20 Meghalaya, Nagaland and Tripura, it is 1:3 ratio, so, 1:5 or 1:3. Next, My Lord, if Your lordship  
21 comes to, para 33, which is at page 25. "It is respectfully submitted that the benefit of Limited  
22 Departmental Competitive Examination which has been given by this Honourable Court has  
23 an accelerated promotional avenue for Civil Judge Senior Division has not led to an  
24 equalisation in the District Judge cadre." Now this I'm saying before Your Lordships' May  
25 Judgment. This is obviously not... that's not taken into account. "Limited quota for LDCE was  
26 introduced in 2002, but data shows that it has not led to a significant reduction in the average  
27 age of Promotee District Judges vis-à-vis Directly Recruited District Judges because 50% of  
28 the Promotee District Judges are recruited in the cadre vide regular promotion and in general  
29 Promotee District Judges enter the cadre at a higher age.

30 In this respect, paragraph 12.108 of the Justice Shetty Commission and the chart appended  
31 thereto becomes relevant...", which I've shown it to Your Lordships. "Since 2002, 75% of the  
32 posts in the District Judge cadre have been kept for Promotee District Judges, being 50% by  
33 regular promotion and 25 by LDCE. However, the data provided shows no equalisation in the  
34 higher post within the cadre of District Judges." Then, My Lord, I've given these examples,  
35 which I have already given to Your Lordships. What is the minimum time that you take as a

1 Direct Recruit Promotee LDCE? So, that I've already shown to Your Lordships. And then My  
2 Lord, there are some paragraphs of this 2025 judgment of Your Lordships in the **Dheeraj**  
3 **Mor** case, which I've set out at page 26 for Your Lordship's consideration.

4 Because to justify this quota, I'm saying that there's a classification necessary. And that is a  
5 justified classification, one of the grounds will be this. May I read that My Lord at para 36 at  
6 page 26. "In a recent judgment, Constitution Bench of this Honourable Court in **Rejanish v.**  
7 **Deepa** in the context of eligibility of a Judicial Officer to be eligible for appointment as a  
8 District Judge under Article 233 of the Constitution, held as follows in the majority judgment.  
9 Therefore, the question that is required to be considered by us is if the purpose of recruitment  
10 is to get persons of necessary qualification, experience and knowledge of life, then, as to  
11 whether the Judicial Officer who is in judicial service could be denied an opportunity to be  
12 recruited in the post meant to be filled by Direct Recruitment.

13 In that respect, we are of the considered view that it cannot be denied that experience of a  
14 Judicial Officer... that experience a Judicial Officer gets by working as a judge can only work  
15 to the betterment of the District Judiciary. The question that we would have to therefore  
16 consider in the present case is to whether such experienced persons having reached judicial  
17 experience can be permitted to participate in the process of Direct Recruitment for the post of  
18 District Judge?" I'm using this to say that that rich experience can very well also apply for this  
19 present purpose that we are arguing before Your Lordships. "We are therefore in full  
20 agreement with those observations made by Shetty Commission according to which, in order  
21 to promote efficiency in the cadre of District Judges, young, talented, meritorious Judicial  
22 Officers should not be denied an opportunity.

23 Experience of a Judicial Officer. As a matter of fact, some of the observations made in the  
24 subsequent three-judge bench judgment of this court in the cases of **Sushma Suri** and  
25 **Deepak Aggarwal** would support the view that we have taken. In both cases, this Court held  
26 that merely because, by virtue of being Government Advocates, the candidates who were in  
27 employment, their rich experience of working as a lawyer for government cannot be ignored.  
28 It has further been held that they continue to appear for the government side, either on civil  
29 or criminal side, their rich experience would benefit the judiciary. As already discussed  
30 hereinabove, the experience the Judicial Officers gain while working as judges is much greater  
31 than the one, a person gains while working as an advocate. Apart from that, before  
32 commencing the work of Judicial Officers, judges are also required to undergo rigorous  
33 training for at least one year".

1 And then My Lord, I'm skipping 147, 148. "We therefore see no reason to deny an opportunity  
2 to such young, talented Judicial Officers to compete with Advocates and Pleaders having seven  
3 years practice in the matter of Direct Recruitment to the post of District Judge". Then, My  
4 Lord, 157. "In that respect we are of the considered view that for bringing the Advocates and  
5 in-service candidates at the same level, it will be appropriate that rules provide that in-service  
6 candidate should be eligible for recruitment to the post of District Judge directly only if he has  
7 a combined experience of seven years as Advocate and Judicial Officer. Similarly, if an  
8 Advocate in participating in the selection process and he was a member of judicial service in  
9 the past, then his experience as Judicial Officer also cannot be ignored. His experience as an  
10 Advocate prior to joining judicial service, his experience as a Judicial Officer, and his  
11 experience as an Advocate after leaving judicial service will all have to be taken together. Such  
12 candidate will be eligible only if he has a combined experience as an Advocate or Judicial  
13 Officer for seven years".

14 So, My Lord, this judgment is proceeding on the basis, at least from what I've quoted, that  
15 judicial experience is very valuable. And according to my submission, which I've made  
16 subsequently with some cases that experience of a Judicial Officer from the Civil Judge cadre  
17 is a valid ground for creating a quota as a valid classification. That's the way I've tried to put  
18 it, My Lord.

19 **JUSTICE JOYMALYA BAGCHI:** Mr. Amicus, when the Super Timescale or the Selection  
20 Grade is done, the experience as a District Judge is taken into consideration, which is equal  
21 for the Direct Recruit as it is for the Promotee District Judge.

22 **SIDDHARTH BHATNAGAR:** Correct, but the rules... sorry.

23 **JUSTICE JOYMALYA BAGCHI:** So, the experience that you are talking of, the rich  
24 experience, which cannot be denied is equal for all of them.

25 **SIDDHARTH BHATNAGAR:** No, what I'm trying to say...

26 **JUSTICE JOYMALYA BAGCHI:** You are trying to again add on the experience of a Civil  
27 Judge, Junior Division.

28 **SIDDHARTH BHATNAGAR:** Correct.

29 **JUSTICE JOYMALYA BAGCHI:** Which is a thing which has already been factored in,  
30 when 50% of the District Judge posts have been reserved for the Promotee District Judge. So,  
31 won't it be amounting to a double benefit for them?

1 **SIDDHARTH BHATNAGAR:** No, My Lord. It is not a double benefit for the following  
2 reason, that within the cadre, when a District Judge Direct Recruit comes in, he's starting from  
3 zero. He's starting from zero. A Civil Judge is coming in, Your Lordships, it may be a ground  
4 for his promotion to the higher cadre, but his experience is not wiped out immediately on  
5 promotion is what I'm trying to say. The experience still remains. Then it is tantamount to  
6 saying that whatever experience of 15 years you had is wiped out on becoming a District Judge  
7 with great respect, My Lords, in my submission, ought not to be not considered in that sense.  
8 Because a District Judge Direct Recruit has zero experience, so you are, in that sense, equating  
9 zero experience with, let us say, 15, 10, 12 years of experience.

10 **JUSTICE K. VINOD CHANDRAN:** Mr. Bhatnagar, there is one another issue. Now with  
11 the data you have presented as of now, in the cadre of District Judges, all of them were  
12 recruited as Junior Division at the age of 27, 28. Because at that time, there was a prescription  
13 of practice. Now for the last one decade, things have drastically changed. They get into this  
14 thing at 23. We cannot go by this data alone with 35. Last two decades, so that is... this data  
15 cannot be relied on because now the people are entering Junior Division at the age of 23. With  
16 the LCE also, at 35 they get a chance to go to the District Judge level. The entire data would  
17 change.

18 **SIDDHARTH BHATNAGAR:** No. So, they get a chance to go into the District Judge level  
19 by taking the Direct Recruitment Examination. That's what Your lordships are saying.

20 **JUSTICE K. VINOD CHANDRAN:** Direct Recruit and the LCE also.

21 **SIDDHARTH BHATNAGAR:** LCE also, at whatever stage, yes.

22 **JUSTICE K. VINOD CHANDRAN:** Now when you say that the 50% are there, that is an  
23 informed choice they took to join as Junior Division.

24 **SIDDHARTH BHATNAGAR:** I am saying, of course, it's an informed choice but I'm saying  
25 that this data is of at least from the year 2002 onwards, this data is not incorrect after that.

26 **JUSTICE K. VINOD CHANDRAN:** No, because the District Judge cadre now has people  
27 who are recruited at the age of 27, 28 at Junior Division.

28 **SIDDHARTH BHATNAGAR:** Yes.

29 **JUSTICE K. VINOD CHANDRAN:** That has changed now. For the last two decades, that's  
30 23, 24.

1 **SIDDHARTH BHATNAGAR:** No, correct. So, in 2002 judgment, Your Lordships did  
2 away... Your Lordships did away with the experience, and again reinstated it now.

3 **JUSTICE K. VINOD CHANDRAN:** That is three years.

4 **SIDDHARTH BHATNAGAR:** Correct. That's right. So let us say... now, let us say you come  
5 in at 23. I'm saying, even then, if the disparity is so much, today the disparity will only increase.  
6 This data, My Lord, whether we take it for 20 years, this data of disparity will be coming in at  
7 a younger age.

8 **JUSTICE K. VINOD CHANDRAN:** As Justice Bagchi said, you can probably provide a  
9 seniority at the time of recruitment. After that, how can it be?

10 **SIDDHARTH BHATNAGAR:** No, but...

11 **JUSTICE K. VINOD CHANDRAN:** Then you will be creating an artificial division between  
12 Promotees, LCDE, and Direct Recruits.

13 **SIDDHARTH BHATNAGAR:** My Lord, that artificial division, in my respectful  
14 submission, is a valid classification because you are taking it, as Your Lordships have held in  
15 this very judgment that I read out that judicial experience is important. So, if judicial  
16 experience is being taken for taking the Direct Recruit Examination as being...

17 **JUSTICE K. VINOD CHANDRAN:** Justice Bagchi said that judicial experience is factored  
18 at the time of promotion, LDCE and all that. Why should it be considered at the time of Super  
19 Timescale, because then what is considered is the experience as a District Judge.

20 **SIDDHARTH BHATNAGAR:** So that is exactly what Justice Shetty also said, My Lord. I'm  
21 not the only one saying it. Justice Shetty said it slightly differently. He said that you have to  
22 give them seniority in the cadre because of the experience. There also they've come into the  
23 cadre immediately.

24 **JUSTICE K. VINOD CHANDRAN:** But then that was not accepted.

25 **SIDDHARTH BHATNAGAR:** Not accepted, but I'm commending it to Your Lordships. My  
26 Lord, that considers the data of 1999 and came to this... after all, one thing is classification.  
27 The other thing is, My Lord, equalisation also. If 50% of the cadre finds itself in a position...

28 **JUSTICE SURYA KANT:** Is there any critical analysis by you based on a comparative  
29 examination of the rule regarding determination of seniority in different states or in different

1 High Courts, that the anomalous equation between Promotees versus Direct Recruits, is it  
2 originating as a result of the seniority rule or as a result of the manner of recruitment?

3 **SIDDHARTH BHATNAGAR:** So, it is... yes, I've given a summary of all the rules.

4 **JUSTICE SURYA KANT:** The experience shows that if you go by the ordinary principle of  
5 recruitment, there will be no heartburn among the Promotees because as soon as the Promotee  
6 vacancy become available, the High Court will either go by merit cum seniority or the High  
7 Courts will go by this LDCE, whatever 10% or now 25%, earlier also 25% . The problem has  
8 most of the cases, the reason only on account of the Direct Recruitment taking place say after  
9 five years and then you are getting the roster points of Direct Recruit in a presumed either  
10 rota-quota or implied rota-quota. And then you are getting a placement in the seniority list  
11 where you are not even born in the cadre. And that has been the... largely the...

12 **SIDDHARTH BHATNAGAR:** So that is one issue definitely, but the age discrepancy is also  
13 a very important issue. My Lord, how do we ignore that? Let us take the worst-case scenario.

14 **JUSTICE JOYMALYA BAGCHI:** Mr. Amicus, one issue also has to be taken into  
15 consideration as to why in 2002 judgment of the *All India Judicial Association*, the  
16 lateral entries were permitted. It was to infuse more talent at various levels of judiciary and  
17 the promotion at every level, including the functional scale promotions or upgradations are  
18 essentially on merit and not only seniority, that is age. That cannot be... you have to factor in  
19 that.

20 **SIDDHARTH BHATNAGAR:** I'm factoring that in My Lord and I'm saying to Your  
21 Lordship exactly what Justice Shetty is saying, that although it is merit cum seniority, but to  
22 come within the zone, you have to be senior enough. You don't even come within the zone.

23 **JUSTICE JOYMALYA BAGCHI:** That is something which is not a classification of a  
24 uniform cadre that is District Judge but giving some more additional handicap or advantage  
25 to the Promotee.

26 **SIDDHARTH BHATNAGAR:** Some advantage.

27 **JUSTICE JOYMALYA BAGCHI:** That is well taken.

28 **SIDDHARTH BHATNAGAR:** Correct.

29 **JUSTICE JOYMALYA BAGCHI:** But what is falling from us is, that if your suggestion,  
30 Suggestion 1 or 2 of a quota in the functional levels are taken, or separate as Andhra Pradesh

1 have suggested, separate lists are maintained, we are actually creating separate, classified  
2 strata in an uniform cadre, which perhaps may be problematic.

3 **SIDDHARTH BHATNAGAR:** Which I agree with Your Lordships. Let us assume My Lord,  
4 it is...

5 **JUSTICE JOYMALYA BAGCHI:** If you want that age, it may be an area of exploring as to  
6 what additional advantages and weightages can be given to these Promotees.

7 **SIDDHARTH BHATNAGAR:** So, My Lord, there's only one weightage, which is the  
8 weightage as was suggested by Justice Shetty, which is one of my suggestions.

9 **JUSTICE JOYMALYA BAGCHI:** Mr. Amicus, another issue is as it is indicated to you by  
10 Justice Chandran, that see the evolving nature of the cadre. The cadre essentially started  
11 functioning for the last two and a half decades.

12 **SIDDHARTH BHATNAGAR:** Right.

13 **JUSTICE JOYMALYA BAGCHI:** It definitely gave an advantage to the Direct Recruits  
14 because of the age differentia in the initial stages.

15 **SIDDHARTH BHATNAGAR:** That's the submission.

16 **JUSTICE JOYMALYA BAGCHI:** And as... and I can speak from my experience in West  
17 Bengal, today there is an equalisation in the cadre. And the percentage of recruits from the  
18 Direct channel and from the Promotee channel are almost balancing out. So, to make some  
19 changes, you must also bear in mind the evolving character.

20 **SIDDHARTH BHATNAGAR:** Correct. So, I've placed those states also where there is an  
21 equalisation such as West Bengal. But, My Lord, please consider, does this quota work against  
22 the Direct Recruits? If they are getting, let us say, 50% quota for 25% of the cadre that actually  
23 works in their favour is my great respect to...

24 **JUSTICE JOYMALYA BAGCHI:** Towards amping the merit factor, and you please bear in  
25 mind that the functional level upgradation is also merit cum seniority. And there, we are, in  
26 fact, in some way restricting the Article 233, 235 powers of the High Court to make a merit-  
27 based selection.

28 **SIDDHARTH BHATNAGAR:** It is restricted. That's one of my submissions, because  
29 otherwise, My Lords, suppose it was not... it was fully being followed on merit cum seniority...

- 1 **JUSTICE SURYA KANT:** Have you done any comparative analysis of the...
- 2 **SIDDHARTH BHATNAGAR:** Of the rules?
- 3 **JUSTICE SURYA KANT:** ...seniority?
- 4 **SIDDHARTH BHATNAGAR:** Yes, I have. There's a summary chart that is filed at the  
5 beginning of a compilation with every single High Court seniority rules, and they're all saying,  
6 My Lord...
- 7 **JUSTICE SURYA KANT:** [UNCLEAR] between Direct Recruits.
- 8 **SIDDHARTH BHATNAGAR:** Correct. So, there they are saying seniority will be... most of  
9 them or all of them that seniority is determined by the 40-point roster. Now, the problem is  
10 that... now, let me tell Your Lordships the problem.
- 11 **JUSTICE SURYA KANT:** So, the 40-point roster must be creating problem. You are...
- 12 **SIDDHARTH BHATNAGAR:** It certainly is.
- 13 **JUSTICE SURYA KANT:** So Direct Recruitment takes place in 2025.
- 14 **SIDDHARTH BHATNAGAR:** Yes.
- 15 **JUSTICE SURYA KANT:** Vacancy is of the year 2020.
- 16 **SIDDHARTH BHATNAGAR:** Correct.
- 17 **JUSTICE SURYA KANT:** So, that person suddenly occupies a position of 2020.
- 18 **SIDDHARTH BHATNAGAR:** Absolutely, right. Correct.
- 19 **JUSTICE SURYA KANT:** And those Promotees in '21 to '25, they will become junior.
- 20 **SIDDHARTH BHATNAGAR:** So, that is absolutely correct.
- 21 **JUSTICE SURYA KANT:** Therefore, that's why we are saying...
- 22 **SIDDHARTH BHATNAGAR:** No, no. Your Lordships' analysis is absolutely correct that  
23 the roster systems, in fact, that's why I said the roster system requires a rework. And My Lord...
- 24 **JUSTICE JOYMALYA BAGCHI:** The roster failed because of internal mismanagement.

- 1 **SIDDHARTH BHATNAGAR:** That maybe there, My Lord. That I can't...
- 2 **JUSTICE JOYMALYA BAGCHI:** The appointments were not regularly made for District  
3 Judges.
- 4 **SIDDHARTH BHATNAGAR:** That's right. If it was made...
- 5 **JUSTICE JOYMALYA BAGCHI:** You see a situation where unforeseen circumstances,  
6 including administrative roadblocks...
- 7 **SIDDHARTH BHATNAGAR:** Yes.
- 8 **JUSTICE JOYMALYA BAGCHI:** ...disable the roster system. That does not mean that the  
9 roster system was incorrect.
- 10 **SIDDHARTH BHATNAGAR:** No, My Lord...
- 11 **JUSTICE JOYMALYA BAGCHI:** That requires some tweaking in the functionality itself.
- 12 **SIDDHARTH BHATNAGAR:** Not only that. My Lord, so the roster system, the other  
13 problem with the roster system is I find it very hard to believe. That we have a situation where  
14 the 40-point roster, seniority, because seniority is by the roster, continues for all three grades  
15 of the District Judge cadre. If merit cum seniority...
- 16 **JUSTICE JOYMALYA BAGCHI:** Grading the District Judge cadre, once you come into the  
17 District Judge cadre, it's a uniform cadre. You have already been given your advantage in the  
18 roster system of 2:1:1, which is the general roster followed in every state.
- 19 **SIDDHARTH BHATNAGAR:** Correct. So, that advantage or disadvantage... according to  
20 me, it's not an advantage at all, which is what I'm trying to show it to Your Lordships, because  
21 the roster is a seniority roster. Anyway, My Lord, I was just...
- 22 **CHIEF JUSTICE B.R. GAVAI:** You have to conclude, because...
- 23 **SIDDHARTH BHATNAGAR:** So, My Lord, I'll just take ten minutes to show one or two  
24 cases. I'm sorry, My Lord, I was just... I got a little carried away. I'm very sorry, My Lord.
- 25 **JUSTICE VIKRAM NATH:** Yes.
- 26 **SIDDHARTH BHATNAGAR:** I'm sorry, My Lord, I took too much time. But Your  
27 Lordships just come to page 29. I've set out three or four judgments which, according to me,

1 My Lords, are relevant. Now, I will not read all of them. But I'll just, My Lord, since time is  
2 short, I'm just going to summarise them. The first judgment, which is **Mervyn Coutindo v.**  
3 **Collector**, and the next judgment, I've set out the paras for Your Lordships to consider later  
4 on. And the other, which is **Roshan Lal**, deal with a situation as to whether persons drawn  
5 from different sources into one integrated class can be further classified. So, that's the  
6 question. So now, these two judgments, My Lord, in the case of... one was the Customs  
7 Department case, and the other was a Train Examiner's case, said that you could... now I've  
8 set out the facts also.

9 **CHIEF JUSTICE B.R. GAVAI:** According to Mr. Basant, these judgments are against you.

10 **SIDDHARTH BHATNAGAR:** Against me. So now, therefore, My Lord, I'm requesting Your  
11 Lordships to come to page 33, because this is the judgment which according to me another  
12 Constitution Bench, which is what I am relying on. So, for Your Lordships to consider. Would  
13 Your Lordships later on just have a look at it, I've set out all the paras. If I read it, it'll take too  
14 much time of both **Roshan Lal** and **Mervyn**. That's against me, you're correct. So, I placed...  
15 I placed all the paras. Please come to page 33, para 40. "In **State of Jammu & Kashmir v.**  
16 **Triloki Nath Khosa**, a Constitution Bench of five Honourable Judges considered the  
17 question of classification based on certain identified criteria. This Honourable Court  
18 considered both the above judgments, which is **Mervyn** and **Roshan Lal**, in the context of  
19 the following question. If persons drawn from different sources are integrated into one class,  
20 can they be classified for the purpose of promotion on the basis of the education qualifications,  
21 that is the issue for consideration before us. The case involved promotion to the post of  
22 Executive Engineers from Assistant Engineers. Under the rule in question, it was provided  
23 that those Assistant Engineers would be eligible for promotion who possessed a bachelor's  
24 degree in engineering or held the qualification of AIME and had put in at least seven years'  
25 service. Honourable Court held that such classification was permissible for first identifying  
26 and then distinguishing members of one class from another as a classification rested on  
27 reasonable basis and bore nexus with the object in view".

28 My Lord, there are some paras. May I just read these? I'm sorry. There are some eight or nine  
29 paras of this judgment. "Judicial scrutiny...

30 **JUSTICE VIKRAM NATH:** Mr. Amicus, you have five minutes left.

31 **SIDDHARTH BHATNAGAR:** My Lord, then I'll... I won't...

32 **CHIEF JUSTICE B.R. GAVAI:** Or the others will have to curtail their time.

1 **JUSTICE SURYA KANT:** It's one of the most celebrated judgements. [UNCLEAR].

2 **SIDDHARTH BHATNAGAR:** I'm not reading it. No, no, I'm not reading it. My Lord, just  
3 two points here on this judgment. I'll just mentioned the points at least. Your Lordships may  
4 permit me. Para 30, page 35, if Your Lordship just sees. The distinguishing features between  
5 the case and *Roshan Lal* is at para 45 onwards, and *Mervyn Coutindo* is distinguished at  
6 para 49, correct, My Lord. Now please now permit me to read para 41. So, My Lord, because  
7 it's saying on a reasonable classification, you can have a promotion within an integrated class.  
8 Now, My Lord, please let me read para 41.

9 **CHIEF JUSTICE B.R. GAVAI:** Para 40?

10 **SIDDHARTH BHATNAGAR:** 41. "This Honourable Court in a seven-judge Constitution  
11 Bench...", this is a recent judgment of last year, *State of Punjab v. Davinder Singh*. So,  
12 this is, My Lord, the sub-classification Judgment. "While distinguishing the judgment in  
13 *Roshan Lal* and... it is held that *Triloki Nath* is the leading judgment for the proposition  
14 that the integrated class can be further classified if there is intelligible differentia, and if the  
15 yardstick used has a nexus to the object of the provision. Reliance in this connection has been  
16 placed on paras 88 to 90 and 308 to 310." My Lord 88 to 90 was of the then Chief Justice, and  
17 308 to 310 was of My Lord, the Chief Justice. And My Lord had, in fact, agreed and concurred  
18 with that. So, My Lord, I am saying seven judges have now, in a sense, upheld *Triloki*. So,  
19 there's no question of further reference as was being argued the other day. That's my  
20 submission, this is the position. Next, there is a judgment that I've cited...

21 **JUSTICE K. VINOD CHANDRAN:** That may not have any application with the page 50.  
22 That *Triloki Nath Khosa* applies this classification only on the basis of educational  
23 qualification.

24 **SIDDHARTH BHATNAGAR:** Correct, absolutely correct.

25 **JUSTICE K. VINOD CHANDRAN:** It is not applicable only.

26 **SIDDHARTH BHATNAGAR:** No, no, now I am saying. Now experience as a classification,  
27 also, I've put a judgment. Experience being a valid ground for classification, for that, I was just  
28 coming to that, in fact, My Lord. Please come to page 44.

29 **JUSTICE K. VINOD CHANDRAN:** 42?

30 **SIDDHARTH BHATNAGAR:** 44, para 45.

1 **JUSTICE K. VINOD CHANDRAN:** Yes.

2 **SIDDHARTH BHATNAGAR:** This is now, My Lord, *Jagannath v. Union of India*. "It  
3 has been held that classification based on experience is a reasonable classification." In  
4 paragraph 7, "In so holding, Honourable Court followed the judgment in *State of UP vs*  
5 *Chaurasia*." And this is what *Chaurasia* says. "Article 14 permits reasonable classifications  
6 founded on different basis. It is now well established that classification can be based on some  
7 qualities or characteristics of persons grouped together and not in others who are left out.  
8 These qualities or characteristics must, of course, have a reasonable relation to the objective  
9 sought to be achieved. In service matters, merit or experience could be the basis for  
10 classification to promote efficiency in administration". This is the line I'm relying on, My Lord.  
11 Rest, I will not... I'll just mention one judgment for Your Lordships' consideration, which is  
12 *Kuldeep Kumar Gupta*. It's a two-judge bench, but My Lord, there all these aspects have  
13 been considered in great detail. It's page 40 onwards of the submission. The paragraphs have  
14 been set out.

15 **JUSTICE VIKRAM NATH:** Paragraph 43.

16 **SIDDHARTH BHATNAGAR:** If I read it, then it'll take ten minutes to do that. These are,  
17 My Lord, the points for Your Lordships' consideration. Obligated, My Lord.

18 **CHIEF JUSTICE B.R. GAVAI:** Thank you. Yes, Mr. Giri. You are next in line.

19 **V. GIRI:** [UNCLEAR] because I appear for the High Court.

20 **CHIEF JUSTICE B.R. GAVAI:** Okay. No, your list shows that you're [UNCLEAR]. You are  
21 appearing for the Kerala High Court?

22 **V. GIRI:** [INAUDIBLE].

23 **DINESH DWIVEDI:** My Lord, we are all interveners, but I am representing Promotees from  
24 State of Bihar.

25 **JUSTICE VIKRAM NATH:** Promotees from State of Bihar.

26 **DINESH DWIVEDI:** We have filed a separate two submission to, My Lord.

27 **JUSTICE VIKRAM NATH:** Is it placed where, Volume 1, page 100?

1 **DINESH DWIVEDI:** My Lord, there is one physical compilation 2, where the latest written  
2 submission, which I could muster, I have submitted. I won't be taking Your Lordships to...

3 **CHIEF JUSTICE B.R. GAVAI:** On behalf of Rakesh Kumar?

4 **DINESH DWIVEDI:** Rakesh Kumar.

5 **CHIEF JUSTICE B.R. GAVAI:** That's at page 168 of the...

6 **JUSTICE VIKRAM NATH:** 168 of Volume 1.

7 **CHIEF JUSTICE B.R. GAVAI:** Right. 168, physical.

8 **DINESH DWIVEDI:** My Lord, I am not relying on the facts and figures. They have already  
9 been disclosed to Your Lordships. There's no point in wasting Your Lordships' time on that.  
10 The fact remains, My Lord, insofar as State of Bihar is concerned and along with couple of  
11 states from the facts has emerged from Amicus's written submission, there is a mixed kind of  
12 perhaps indication, in certain states the roster application to seniority has caused a little  
13 problem, particularly in my State, State of UP, and perhaps in certain other states like Andhra  
14 Pradesh and all that. But in certain states like Bengal, Madhya Pradesh and all, perhaps this  
15 situation has not been that troublesome. It's been quite fluid. So, I would not be relying upon  
16 the fact that the percentages of posts that have been occupied by the Promotees and Direct  
17 Recruits, that may not furnish a very strong ground for perhaps suggesting a rule of seniority.

18 My submission is slightly different, in the sense that, My Lord, prior to 2002, the rule of  
19 seniority invariably and universally followed was that date of substantive appointment to the  
20 date of entry into service and therefore, your seniority will count on from that date. That was  
21 what was said by the Constitution Bench in **Direct Recruits** case. So, what Your Lordships  
22 said that date of vacancy is not relevant. Retrospectivity cannot be given to the appointment.  
23 So, the critical factor was date of substantive appointment into service. That would be the  
24 commencement of your seniority or the reckoning of seniority. It was in 2003, as a  
25 consequence of Shetty Commission's recommendation, My Lord, that Your Lordships changed  
26 the rule of seniority. And perhaps it seems Your Lordships were impressed by **Sabharwal's**  
27 case, the enunciation of roster application and applied that to seniority. My Lord, when this  
28 was done, this seniority rule was changed, what was not pointed out to the court was that  
29 **Sabharwal** case is a case which is of a single selection. In other words, that was a case where  
30 Promotees of different castes were vying with each other for, under different quotas, were  
31 vying with each other for promotion. So, it was a single selection taking place simultaneously

1 for everyone. And therefore, adjustments could be made. It could be made through roster also.  
2 There was no difficulty.

3 But in our case, tragically, My Lord, the selection is threefold. One, by direct recruitment, the  
4 other by the LCE category, and the third is by promotion. And all the three selections take  
5 place at different points of time. Sometimes, direct recruitment doesn't take place. Sometimes  
6 the promotion is delayed, and so and so forth. And consequently then it becomes difficult to  
7 adjust by operation of the same roster. And what I borrow and which fell from My Lord Justice  
8 Surya Kant was that, that difficulty is arising when you start adjusting people who are  
9 promoted in the next financial... next calendar year into the roster and allow them to score a  
10 march over the others.

11 One factor has to be kept in mind is that date of entry into service cannot be wiped away. We  
12 cannot go by the period of selection or the commencement of the selection or the  
13 advertisement of vacancy. My Lord, that cannot count for the purposes of seniority. Because  
14 otherwise, we'll be giving retrospectivity to the appointment or promotion. Now, keeping this  
15 factor in mind, that retrospectivity beyond the date of substantive appointment cannot be  
16 given. Then we must, and we have to consider how to apply the roster. Roster can only be  
17 applied, if Your Lordships would see, in **Sabharwal**, in the 2002 case, My Lord, followed  
18 **Sabharwal's** case without looking into the fact, that it was only single selection. And  
19 therefore, there was no difficulty in applying the roster. They applied it here.

20 But the difficulty here was a three-pole selection, which were not being held simultaneously,  
21 and this difficulty was felt by **Malik Mazhar Sultan**, 2006 and '08. And therefore, Your  
22 Lordships recommended a time schedule simultaneously starting and concluding, so that all  
23 the three conclude at the same time and then the select list is indicated and then the  
24 appointments are made. Therefore, the year of recruitment would always be the same. And  
25 then you can adjust it in the roster conveniently without any difficulty. Or the other thing could  
26 be, perhaps, that you hold these separate selections separately and wait the select list, till all  
27 the three selections are concluded and then issue appointment letters. There may be a gap of  
28 six months, five months or maybe ten months between the three categories of selection.

29 And then thereafter, appointment letters are issued. That perhaps will perhaps reduce the  
30 difficulty in fitting it, the seniority via roster, My Lord. If this cannot be done, My Lord, then  
31 the only way possible in my respectful submission is keeping the first factor in mind that no  
32 retrospectivity given... can be given to the appointee... appointments. The only way to adjust  
33 seniority via roster is, that we have to run the roster year-wise. For instance, supposing, My  
34 Lord, selection commences, any selection commences, direct recruitment or promotion or

1 otherwise, and it will always be the effort to the court, Your Lordships, that the selection would  
2 start. All the three selections should start simultaneously, close by. Now once the selection  
3 starts, the roster revives.

4 The roster comes into being and roster has to be yearly roster. It can't be roster for n number  
5 of years. And that is where the problem which, My Lord, Justice Surya Kant pointed out will  
6 arise. If the roster runs year-wise, then supposing the direct recruitment takes place in 2018,  
7 and for some reason or the other administrative reason or the other, or difficulty, or maybe a  
8 challenge, something like that, that they postpone the other tests are... or other selections are  
9 postponed to the next calendar year, then the person who gets appointed in the next calendar  
10 year cannot be fitted into the roster points of this recruitment year. This recruitment year must  
11 end by 31st of December if it is calendar year. And the roster can run only till then. Whoever  
12 is appointed, Direct Recruit, Promotee or LCE, whoever it may be, he will be fitted as per the  
13 roster and will be there in the cadre of the Additional District Judges.

14 The others who come later on, next year, supposing the exams or the selection of the  
15 Promotees is perhaps extended to the next calendar year, My Lord, then the roster of next  
16 calendar year will have to be adopted and utilised. It can't be the earlier year. Because then  
17 otherwise difficulty is, for instance in the case of Bihar, what happens is first three posts go to  
18 the Promotees, the fourth goes to the... as per the roster to the Direct Recruit, and then again,  
19 five, six, seven, and so on and so forth. Now if we... supposing the Promotees' promotion is not  
20 concluded in the calendar year, then the difficulty would be how to fit the Direct Recruit  
21 because he's at Item 4. And the Promotees who get selected in the next calendar year or  
22 recruitment year, they come and occupy space before the Direct Recruit, and that can be vice  
23 versa also.

24 So, what I suggest, with the humility, My Lord, that Lordships must look into this aspect that  
25 the roster operation has to be yearly. It cannot extend beyond the calendar year or the  
26 recruitment year. Whatever recruitment takes place in any of the categories, they have to be  
27 fitted as per the roster.

28 **CHIEF JUSTICE B.R. GAVAI:** So, according to you, it cannot be carried forward?

29 **DINESH DWIVEDI:** It can't be carried forward because the moment you start carrying  
30 forward, My Lord, then the discrepancy and this haphazard allocation would start coming in.  
31 For instance, let's take a case, three Promotees are appointed in 2018. The Direct Recruit  
32 selection couldn't conclude by 2018. Then we can't fit, My Lord, next year when the Promotees  
33 come in or the remaining Promotees of 2018, they can't fit into the roster because Direct

1 Recruit occupies the fourth place. He gets selected in 2018, comes and sits over the other  
2 Promotee. So, that haphazard and perhaps incorrect, inappropriate application should be  
3 avoided. And the only way to avoid is to run the roster till the end of the year. And then whoever  
4 gets appointed, for whatever reason, whoever gets appointed next year, he should come and  
5 fit into the roster for the next year, so that he will always be junior.

6 My Lord, the basic rule is someone who comes into service in the succeeding year cannot  
7 precede the person who's already been appointed substantively on this post in the earlier year.  
8 The person in the earlier year will always be senior to the one who is appointed subsequently.  
9 So this, My Lord, application of roster, perhaps, would resolve all the controversies with regard  
10 to the seniority aspect.

11 Now coming to the other aspect, My Lord. The Promotees, because Your Lordship has seen  
12 the difficult position of the Promotees, particularly in my state, UP is also... and certain other  
13 states, Rajasthan, Gujarat, they are all having the same... suffering the same fate. So, what I  
14 submit with respect is, My Lord, that there is no doubt that once the selections to the post of  
15 Additional District Judge or District Judge Entry Level, we in UP call it Additional District  
16 Judge. In perhaps, Bihar, it is Entry Level District Judge. Once they are appointed, they merge  
17 in the common cadre. There can be no dispute about that fact. I am not saying create a class  
18 within the class for further promotion. That's not the case, My Lord. All that I am saying is  
19 that since there are quotas prescribed for District Judges Level posts, it would be appropriate  
20 to facilitate the smoother transition to the higher category of posts by giving separate quotas  
21 commensurate to the population of the judge in the cadre. Let's say, Promotees, they are 50%.  
22 So, you can give the quota of 50% in the Principal District Judge category. Likewise, 25% Direct  
23 Recruits, they can get the quota of 25% in the Principal Judge category and so LCE and so  
24 forth. What happens here is that we are not categorising or classifying or we're not denying  
25 anyone the promotion. They're all getting their due chances within their population, which  
26 they are fair... which they occupy and the... in the post of District Judge.

27 **CHIEF JUSTICE B.R. GAVAI:** Would it not be unfair to those coming through Limited  
28 Competitive Departmental Examination.

29 **DINESH DWIVEDI:** No, they will also get 25%.

30 **CHIEF JUSTICE B.R. GAVAI:** They get 25%.

31 **DINESH DWIVEDI:** They'll get.

1 **CHIEF JUSTICE B.R. GAVAI:** But they, on account of their own merit have come earlier  
2 in the cadre of District Judges.

3 **DINESH DWIVEDI:** But can you bear in mind as pointed out by my friend, My Lord...

4 **CHIEF JUSTICE B.R. GAVAI:** They are again pushed back. So, those persons who are  
5 enjoying the office without trying for competition to excel themselves, they will get it as a  
6 bounty.

7 **DINESH DWIVEDI:** No, My Lord, then they have their own quota in which they can go up.  
8 It's not that the quota is, My Lord, blocked at the top. Quota is open at the top. 25% LCE if  
9 they... that's an incentive given to those who want to get the faster promotion and are  
10 meritorious, more meritorious, perhaps. Then they have their quota within which they can go  
11 25%. And 25% would be more than adequate to accommodate all the LCEs, My Lord. Your  
12 Lordships have seen the data. Your Lordships have seen. Your Lordships would not get so  
13 many LCEs who can go over 25%. Likewise, My Lord, on the other hand, look at the Promotees.  
14 They are... they form the bulk of the population in the cadre of District Judge. And yet, My  
15 Lord, from '26... the fact is from '26, 2026 onwards there would be no Principal District Judge  
16 in the State of Bihar belonging to the Promotee cadre, 50% quota.

17 There would be no, till 1935... I mean 2035. And what will happen, thereafter, we don't know.  
18 So, the question is, at the moment there are 90 Principal District Judges, out of which 85,  
19 perhaps approximately are the Direct Recruits and five are... four or five are... four, I think  
20 perhaps are Promotees.

21 **JUSTICE VIKRAM NATH:** 91, 86 and 5.

22 **DINESH DWIVEDI:** Now look at this, My Lord, as a skewed consequence. The 50% of the  
23 population has only four seats, while the 25% of the population...

24 **JUSTICE K. VINOD CHANDRAN:** That is because of that anomalous situation. Seven  
25 years, no recruitment.

26 **DINESH DWIVEDI:** My Lord, that anomalous situation happened... that anomalous  
27 situation happens even in the Promotee cadre because we got recruited in 2001. We got  
28 promoted as Civil Judge, Senior Division in 2014. And then 2018 as...

29 **JUSTICE K. VINOD CHANDRAN:** Selection.

30 **JUSTICE VIKRAM NATH:** District Judge, yes.

1 **DINESH DWIVEDI:** District Judge at Entry Level. So it has taken nearly 17 years for us to  
2 reach that stage. And at every stage, we have been considered to be meritorious to be selected  
3 for the higher grade. So it's not that we were worthless, kind of, or the deadwood, as Your  
4 Lordships call it. So, looking into this, my suggestions are twofold. One, operate... let the  
5 seniority be determined on the basis of roster. For instance, in this case, in the State of Bihar,  
6 May 2018 Direct Recruits got recruited into the cadre. And in December 2018, the Promotees  
7 got recruited into... both came in 2018. So it won't be a very big catastrophic loss to anyone if  
8 four or five-months' loss here and there, but at the same time you can adjust them very  
9 conveniently into the roster of that year.

10 Now, if we start counting seniority by month and days, perhaps they may have a cause. But  
11 the fact remains, it can't be done. My Lord, we are looking at the overall picture, how to run  
12 these systems smoothly. So, there some casualty here and there will be there. But by and large,  
13 this system of running the roster per annum will reduce the friction to the minimum and let  
14 the system function smoothly. Add to that the quota for the Principal District Judge category  
15 post for the... My Lord, separate categories, there is no classification as such. **Triloki Nath**  
16 **Khosa's** rule will not apply here. There, the rule was that, My Lord, the person who could  
17 have otherwise secured promotion, if there was no rule prescribed for higher education, for  
18 further promotion, then he would have secured further promotion. So, by this prescription of  
19 qualification, additional qualification, he got denied the opportunity. But here, there is no  
20 denial of opportunity. We are giving commensurate quota to each category, depending upon  
21 what the quota was in the earlier category.

22 **JUSTICE SURYA KANT:** Mr. Dwivedi, if the roster is to be approved annually, the direct  
23 recruitment process starts, let us say, in July. In June-July, we issue the advertisements, invite  
24 application applications, hold preliminary exams, then written main exams, then interviews.  
25 And by that time, we are somewhere near end of December. Someone files a writ petition in  
26 the High Court, the declaration of result is stayed, right.

27 **DINESH DWIVEDI:** That happens.

28 **JUSTICE SURYA KANT:** 31st December passes. New year comes. Writ petition is  
29 dismissed, found to be privileged. What will happen in that case?

30 **DINESH DWIVEDI:** No, there, My Lord, in that particular list, Your Lordships can always  
31 grant a decree or an order that can restore their losses for that.

32 **JUSTICE SURYA KANT:** But decree fixing will have to be created, that for existential  
33 purposes, but for an unforeseen circumstance.

1 **DINESH DWIVEDI:** Quite right.

2 **JUSTICE SURYA KANT:** They would have been appointed.

3 **DINESH DWIVEDI:** Quite right.

4 **JUSTICE SURYA KANT:** So, therefore, you will create a decree.

5 **DINESH DWIVEDI:** That very often Your Lordships do, My Lord. If consideration has not  
6 been done, Your Lordships direct that it can be considered with effect from that.

7 **JUSTICE SURYA KANT:** The other side argument will be, that if you have an annual roster  
8 and you fail to hold examination for any reason, not only fail to examine, you hold the exam,  
9 but if you fail to make an appointment for any XYZ reason, why eventually, the finally selected  
10 candidates should suffer?

11 **DINESH DWIVEDI:** My Lord, may I answer this? We cannot bring about any perfect  
12 system. Your Lordships would never have that. There will always be a dispute and people will  
13 dispute. We have been seeing it right from the days of *Patwardhan* till date. Some dispute  
14 or the other comes whenever there are two-fold quotas. But the issue and the idea, which I'm  
15 suggesting is to have the minimal friction, minimal disturbance, and minimal heartburning on  
16 either side, all the three sides. There would be some. There's no difficulty in that. There would  
17 be some which will require resolution, spot resolutions, and seen in the light as and when it is  
18 required. But the fact remains, by and large, things should proceed smoothly. As Your  
19 Lordships said, My Lord, 2018 if this direct recruitment concludes, the Direct Recruits will be  
20 adjusted against the roster of 2018.

21 But on the other hand, the bigger anomaly occurs as Your Lordships noticed, My Lord, that if  
22 we start adjusting people of 2018-19 selection in the year roster of 2018, then it becomes a  
23 little more anomalous. So, let's see where the... perhaps the least amount of friction, least  
24 amount of heartburn, and least amount of difficulty is there. Obviously, we cannot have a  
25 perfect system. That is what I am suggesting. And coupled with the... My Lord, quota at the  
26 top, perhaps each segment will proceed smoothly in its own. That's my submission, My Lord.

27 **JUSTICE VIKRAM NATH:** All right. Yes, Ms. Makhija.

28 **CHIEF JUSTICE B.R. GAVAI:** Yes, please continue.

1 **DINESH DWIVEDI:** I'm grateful, My Lord. And before I end, My Lord, there's one apology  
2 of min. Sincerely, I must say, because on the last occasion I had mispronounced My Lord  
3 Justice Chandran's name. So, I'm extremely sorry for that.

4 **JUSTICE K. VINOD CHANDRAN:** N is an addition, we have in South India.

5 **DINESH DWIVEDI:** Well, that can be the sorted out over a cup of tea or coffee also. I'm  
6 grateful.

7 **VIBHA DATTA MAKHIJA:** Please, Your Lordships. I'm appearing for the LCE category,  
8 Your Lordships.

9 **CHIEF JUSTICE B.R. GAVAI:** For the...?

10 **VIBHA DATTA MAKHIJA:** LCE category, Your Lordships. Unfortunately, in this whole  
11 battle, Your Lordships, we are the grain which has been sandwiched between the two stones.  
12 And the benefit which was supposed to come to us as an incentive, Your Lordships, is not  
13 coming to us for the basic fallacy of every High Court treating us as a part of the Promotee  
14 group. Now, Your Lordships from *All India Judges 3* onwards, there are three categories.

15 **JUSTICE SURYA KANT:** You're appearing for which category?

16 **VIBHA DATTA MAKHIJA:** LDCE.

17 **JUSTICE VIKRAM NATH:** LDCE.

18 **JUSTICE SURYA KANT:** LDCE.

19 **VIBHA DATTA MAKHIJA:** Your Lordships, from *All India Judges No. 3* onwards, three  
20 streams have been created. So, in terms of considering for making the cadre of District Judge,  
21 there are three streams. There are not two streams, Direct Recruit and Promotees. There are  
22 three streams, which are Direct Recruits, LDCE and Promotees, Your Lordships. What has  
23 changed over the years, Your Lordships, from the 2002 Judgment to 2025 Judgment is only  
24 the numerical quota of LDCE, which is 25%, then it came down to 20%... and now 10%, and  
25 now it has gone back to 25%. But the concept with regard to it being a separate and distinct  
26 category has not been obliterated since 2002 onwards, Your Lordships.

27 Now, for that purpose, let me just point out, Your Lordships, two or three concepts which are  
28 required for the purposes of clarity, how the seniority list must operate. First of all, Your  
29 Lordships, the feeder cadre for the post of District Judge Entry Level is what has to be taken

1 as a unit. The unit is not the further promotional posts in the District Judge cadre. So, when  
2 we are looking at the cadre, as per all the High Court rules which I will show to Your Lordships,  
3 the cadre is of higher judicial services cadre. And it is the post of the Entry Level that we have  
4 to look at, where the seniority and gradation list will be made. Thereafter, Your Lordships, it  
5 will move in accordance with that basic Entry Level seniority list. The further promotions will  
6 be on basis of that. So, that is the first thing Your Lordships, that the cadre has to be at the  
7 Entry Level.

8 The second aspect that Your Lordships is, that how do we rationalise and ensure that no  
9 category out of these three categories steal a march or are left behind for certain administrative  
10 exigencies. As we have discussed Your Lordships, it just fell from Lordship that for some  
11 reason, suppose a promotion DPC doesn't happen, if there is no promotion which is done for  
12 the next three to four years as what happened during COVID period, Your Lordships, there  
13 were promotions which were due but could not be given because of the administrative  
14 purposes. Then at whose peril will that period which has... valuable period which we have lost,  
15 Your Lordships, at whose peril will that period go? So, that anomaly has to be adjusted and  
16 how that has to be adjusted, Your Lordships, is my Learned friend, Learned Amicus has  
17 suggested four alternatives, Your Lordships.

18 In my respectful submission, Your Lordship, each of the alternative is a... I'm sorry to say a  
19 half measure. It is not a complete solution to the problem that we are facing. Many High Courts  
20 have rules. And I'll just point out to Your Lordships where the rules are on basis of cadre, rules  
21 are on basis of roster. However, they have not been applied consistently by the High Courts. It  
22 fell from Justice Bagchi that the problem that is arising is not the methodology, but it is the  
23 application of the methodology. And I will show that also, Your Lordships. So, the third aspect  
24 is this aspect, Your Lordships, that how is the quota to be worked out. Next aspect, Your  
25 Lordships, is whether it has to be worked out on the basis of post or vacancy? This is also a  
26 well-conceptualised legal concept, Your Lordships. I'll give those judgments, that the roster  
27 has to operate on basis of post which Your Lordship has also taken in account in the 2025  
28 judgment of **All India Judges** that the vacancy will be filled up from the same category,  
29 where the vacancy arises, Your Lordships.

30 Like we just discussed, Your Lordships, if there is a retirement, suppose there is a death,  
31 suppose there is no further promotion, then those vacant posts on the roster points arise.  
32 Those will be filled according to the category to which the roster point belongs. Next aspect,  
33 Your Lordships, is **All India Judges 3**. The basis of **All India Judges 3**, Your Lordships,  
34 for adopting **R. K. Sabharwal** was that in **R. K. Sabharwal**, which is the locus classicus,  
35 the caste-based roster was the workable method by which now, as per the experience, Your

1 Lordships, has not been faulted at all. The method of the roster is working perfectly. And in  
2 that also, Your Lordships, we have multilayered quotas. One will go to the General category.  
3 Next will go to SC, ST, OBC. So, these are four broad categories in which the roster works, Your  
4 Lordships. So, the roster system, by administrative experience has been working very  
5 efficiently in that caste-based reservation. And that is why Your Lordships imported the roster  
6 system by **All India Judges** the third, 2002 judgment.

7 That having been imported, Your Lordships, the rules were made by various High Courts after  
8 2002. However, now the problem that has arisen is whether continuity in service is to be the  
9 criteria for the seniority to be adjudged. Some High Courts do prescribe continuity of service.  
10 Some High Courts says that it shall be irrespective of continuity of service. So, length of service  
11 in the feeder post, some High Courts have said that it will be considered to put you in the  
12 seniority list. In some High Courts, they have said that it will depend on the roster point  
13 irrespective of the date that you come into the position. The argument that is raised against  
14 this by Direct Recruit, Your Lordships, is that you are not even born in the cadre. So, continuity  
15 of service is the best method to adjudge your *inter se* seniority.

16 If you are not born in the cadre, you have not been appointed to the post of District Judge, you  
17 cannot seek seniority over a previously appointed Direct Recruit. Suppose I am a Promotee,  
18 Your Lordships. My promotion batch comes in three batches delayed, Your Lordships. But  
19 direct recruitment has taken place, the advertisement has gone out, and the appointments are  
20 made. I am due for promotion, say in 2000, Your Lordships, but my selection process does  
21 not take place in 2000. It takes place in 2003. So, the three-year gap, then I come under the  
22 rank of the Direct Recruit person who has come in in 2000. So, what Lordships have said is  
23 that the period of continuous officiation will not be the criteria. Your seniority in the cadre will  
24 come according to your roster point.

25 So if a Promotee came at roster Point 10, then even if I have come in three years later, I come  
26 in Point No. 10. And Direct Recruit comes under Point No. 11, then even if he has come in in  
27 2000, he comes at Point No. 11. This is the *inter se* seniority roster which has been... the  
28 mechanism has been devised, Your Lordships, and also has been followed in various rules.  
29 Now the second, another aspect of this, Your Lordships, is that with regard to LCE,  
30 particularly, there are four judgments I want to show to Your Lordships, where there have  
31 been conflicting aspects which have been considered by Lordships, and there is no clarity.  
32 Therefore, Your Lordships will be required to give us clarity as to which of the four... three  
33 options are... is the correct option, which must be followed, which will be the most efficient  
34 option, Your Lordships.

1 So, I will just point those three judgments out to Your Lordships. Then comes the aspect, Your  
2 Lordships, within... now these are three categories at the same level. Now within the  
3 Promotees itself, what will be the seniority? What will be the basis of seniority? Now between  
4 these three categories, Your Lordships, merit is the basic criteria, is the primary criteria. And  
5 that is why it is being incentivised for the LCE category. So, when the merit is incentivised,  
6 Your Lordships, how is it incentivised on ground, Your Lordships? It can be incentivised only  
7 by me climbing the ladder higher, faster. But if I take the exam, I do very well in the exam or  
8 do badly also, but I clear the exam, Your Lordships. And I remain at the same position in the  
9 Promotee list, then there is no incentive for me to better my skills, Your Lordships.

10 And from practical, state-wise aspects, I can show to Your Lordships that Promotees who took  
11 LCE exam, they are actually coming lower in seniority than higher in seniority. And I'll show  
12 from UP, because I'm appearing in the UP matter, Your Lordships. That they have come down  
13 in seniority, so many of them, what Your Lordships have found that people are not taking LCE  
14 exam. They are not taking it for the purpose because in promotion they are rising faster.

15 **CHIEF JUSTICE B.R. GAVAI:** But that now we have resolved.

16 **VIBHA DATTA MAKHIJA:** No, Your Lordships.

17 **CHIEF JUSTICE B.R. GAVAI:** Yes, because earlier they could not appear before  
18 completion of ten years.

19 **VIBHA DATTA MAKHIJA:** Correct.

20 **CHIEF JUSTICE B.R. GAVAI:** Now we are reduced it to seven years.

21 **VIBHA DATTA MAKHIJA:** That is one aspect. The second aspect, Your Lordships is, that  
22 despite my being eligible for taking the LCE, exam, despite that, Your Lordship, now age, etc.,  
23 has been resolved. But where do I fall on the seniority list? I'm still at the bottom of the  
24 seniority list. The pool, Your Lordships has resolved. That the pool will become bigger.

25 **CHIEF JUSTICE B.R. GAVAI:** No, no. If somebody, suppose A passes LCDE.

26 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

27 **CHIEF JUSTICE B.R. GAVAI:** And get promoted in 2020.

28 **VIBHA DATTA MAKHIJA:** Yes.

1 **CHIEF JUSTICE B.R. GAVAI:** The juniors will be... who are promoted subsequently from  
2 the Promotee cadre will be always in junior to him. So, where is the seniority?

3 **VIBHA DATTA MAKHIJA:** Your Lordships, I will show from the actual application, Your  
4 Lordships, that is not what is taking place on ground. Your Lordships have set it out. Lordships  
5 have said that the rules will be formulated. Rules are formulated. But what is happening, Your  
6 Lordships, at the High Court are now using the roster year-wise or recruitment wise.

7 **JUSTICE SURYA KANT:** Ms. Makhija, this must be happening on account of the perceived  
8 strict observance to the roster points.

9 **CHIEF JUSTICE B.R. GAVAI:** Roster points.

10 **JUSTICE SURYA KANT:** That irrespective of you, as Honourable CJI has pointed out, that  
11 irrespective of you qualifying in 2020...

12 **VIBHA DATTA MAKHIJA:** Please, Your Lordship.

13 **JUSTICE SURYA KANT:** ...and say, particular roster point, say for example, you are 12.

14 **VIBHA DATTA MAKHIJA:** Yes, Your Lordship.

15 **JUSTICE SURYA KANT:** And the ordinary Promotees, where it comes to seniority  
16 Promotee, if they have a roster Point No. 10 and 11, so even if they are promoted in 2023, they  
17 are being placed at 10 and 11. As resultantly, you are stuck at No. 12, that might be happening  
18 only because of misconstruction or misapplication of the roster.

19 **VIBHA DATTA MAKHIJA:** I'm most grateful, Your Lordships. That is one of the reasons.  
20 And the other reason also, Your Lordships, is...

21 **JUSTICE SURYA KANT:** In most of the cases, the seniority is being rostered by this roster.

22 **JUSTICE VIKRAM NATH:** Probably, then take it back to the date of vacancy.

23 **VIBHA DATTA MAKHIJA:** Your Lordships is absolutely right. Why that is happening is  
24 because it is controlled... the roster is not controlled as a running account on the basis of cadre  
25 strength, but it is controlled by recruitment. So, the roster breaks in the first year. Suppose  
26 there are 20 recruitments, Your Lordships, after No. 20, it restarts from No. 1, whereas it has  
27 to continue with number 21. So, that is where the breakdown is happening. That it is selection-  
28 wise or year-wise that the roster is again put into play. So therefore, Your Lordships will notice

1 that normally in all High Courts, I'll show the appendix... in the roster, you have first three  
2 direct appointments, next two Promotees, and the last, Your Lordships, LCE. Or it varies from  
3 different... the numerical or the this thing, but usually direct Promotee is the No. 1 in most of  
4 the rosters which have been prescribed. Now, unfortunately, what is happening is that suppose  
5 ten people have been selected in a particular year, Your Lordships, again, direct recruitment  
6 come in the roster, higher in the roster, the next selection.

7 So, the breakdown is happening at that particular point. The breakdown, it is not that the rule  
8 is not providing. The rule is providing, but the way it has been applied, Your Lordships, at least  
9 in Uttar Pradesh, is for this reason that it is applied on basis of continuity of service and it is  
10 applied selection-wise. It is not applied cadre-wise.

11 Then the last thing that I want to bring your notice and attention to Your Lordships is where  
12 there'll be some guidance which will be required by Your Lordships, is with regard to the  
13 selections which have taken place post-2002. Now, in 2002, Your Lordships had given them  
14 time to implement it, to amend the rules. The rules got amended, but again our complaint is  
15 this, that the rules were not being followed as per the amended aspects, Your Lordships. So,  
16 what about the selections which have taken place after 2002? Because in 2002 itself, it was  
17 mandated by this Honourable Court that this will now apply prospectively.

18 Then from 2002 onwards, Your Lordships, my humble submission is that all selections which  
19 have taken place post-2002 have to be in accordance with the guidelines which have been  
20 given by Your Lordships in **All India Judges**, and what Your Lordships will decide today,  
21 Your Lordships. So, that date, cut-off date, on basis of which the seniority must be drawn in  
22 the cadre, Your Lordships will have to consider and give that guidance that what will be the  
23 date from which... because Your Lordships have, in all orders and judgments, even in 2025,  
24 Your Lordships have said that this will apply prospectively, the 25%. Then Lordships have also  
25 said will amend the rules. The shortfall is not amendment of the rules. The shortfall, Your  
26 Lordships, is the application of the rules.

27 Now, Your Lordships, shortly, I will just point out. If Your Lordships will just see **R. K.**  
28 **Sabharwal** for a moment, Your Lordships. Lordships will find it... Your Lordships, Volume  
29 5A, page 360. Lordships, it is short, concise judgment, which is holding fort even today, Your  
30 Lordships, which has withstood the test of time.

31 **JUSTICE K. VINOD CHANDRAN:** Page 360?

32 **VIBHA DATTA MAKHIJA:** 360, Your Lordships. Volume 5A.

- 1 **JUSTICE VIKRAM NATH:** Not the Volume you provided just now, no?
- 2 **VIBHA DATTA MAKHIJA:** No, Your Lordships, that's 6, that's Volume 6. This is the Nodal  
3 Counsel's Volume 5A, Your Lordships. Yes, page 360.
- 4 **CHIEF JUSTICE B.R. GAVAI:** Which judgement?
- 5 **VIBHA DATTA MAKHIJA:** *R. K. Sabharwal*, Your Lordships.
- 6 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 7 **VIBHA DATTA MAKHIJA:** Now my submission, Your Lordships, with regard to *R. K.*  
8 *Sabharwal*, is that Your Lordship this lays good law, and it is a five-judge bench judgment,  
9 Your Lordships, and that must be followed again, and has been followed. And there is no cause  
10 to differ from this, Your Lordships. Your Lordships may kindly come to paragraph no. 5. This  
11 was with regard to the *Punjab Engineering Services*, Your Lordships. And here the  
12 dispute was with regard to *inter se* dispute between Promotees and Direct Recruits. Your  
13 Lordships have the SCR copies. Your Lordships will come to page 369, Placitum D.
- 14 **CHIEF JUSTICE B.R. GAVAI:** Page 369?
- 15 **VIBHA DATTA MAKHIJA:** Please, Your Lordships.
- 16 **GOPAL SANKARANARAYANAN:** My Lords, I have a suggestion. Volume 3R has the SCC  
17 Volume of *Sabharwal* because I think if Ms. Makhija is referring to para numbers, that may  
18 be more helpful. R3.
- 19 **VIBHA DATTA MAKHIJA:** Thanks. Your Lordships may... I'm just reading the portion  
20 which is relevant. Your Lordships may mark it. It's para 5 in the SCC, and it is Placitum D at  
21 page 44, internal 44, Placitum D in the SCR. "We see considerable force in the second  
22 contention raised by the Learned Counsel for Petitioners. The reservations provided under the  
23 impugned government instructions are to be operated in accordance with the roster to be  
24 maintained in each department. The roster is implemented in form of running account from  
25 year to year. The purpose for running account is to make sure that SC, ST, and OBCs get their  
26 percentage of deserved posts. The concept of running account in the impugned instructions  
27 has to be so interpreted that it does not result in excessive reservation".
- 28 Then, Your Lordships will skip a bit and come to the middle of the paragraph, where it is said,  
29 "We see no justification". Your Lordships, then an example is given. And then if Your  
30 Lordships will come to...

1 Yes, Your Lordships, page 370 top, "We see no justification." " We see no justification to  
2 operate the roster thereafter. The running account is to operate only till the quota provided  
3 under impugned instructions..."

4 **CHIEF JUSTICE B.R. GAVAI:** This says that once that is complete, then the person, the  
5 vacancy following will be picked from that category alone.

6 **VIBHA DATTA MAKHIJA:** Please, Your Lordships. That is the principle. That's the clear-  
7 cut principle. And one more aspect which is clear from here, Your Lordships, is whether it has  
8 to be according to the post or the vacancy. If Your Lordships comes to the last portion of this  
9 paragraph, it says, "The vacancies are rising in the cadre after the initial posts are filled will  
10 pose no difficulty as and when there is a vacancy, whether permanent or temporary in a  
11 particular post, the same has to be filled from amongst the category to which the post belonged  
12 in the roster. For example, SC persons holding the post at roster point 1,7,15 retire, then these  
13 slots are to be filled from amongst the persons belonging to the SCs itself. Similarly, if persons  
14 holding the post at point 8 to 14 or 23 to 29 retire from these slots are to be filled from among  
15 the General category. By following this procedure, there shall neither be shortfall nor excess  
16 in the percentage of reservation."

17 Then, Your Lordships, next paragraph is with regard to the basis, what is the total strength on  
18 basis of which it will be calculated. "It is the cadre strength and not the recruitment strength.  
19 The expression posts and vacancies often used in the executive instructions providing for  
20 reservations are rather problematic. The word 'post' means an appointment, job, or  
21 employment, a position in which a person is appointed. 'Vacancy' means an unoccupied post  
22 or office. The plain meaning of the two expressions make it clear that there must be a post in  
23 existence to enable the vacancy to occur. The cadre strength is always measured by number of  
24 posts comprising the cadre. Right to be considered for appointment can only be claimed in  
25 respect to a post in a cadre. As a consequence, the percentage of reservation has to be worked  
26 out in relation to the number of posts which forms the cadre strength."

27 Now, under the UP Rules, Your Lordships, the cadre is defined under Rule 2, I think, where it  
28 says that the... it will be a... the service will be a single cadre called the Higher Judiciary Service  
29 Cadre. So, the cadre is the entry level post that we are talking about. Then, Your Lordships,  
30 this has been now consistently followed. And if Your Lordships will take three particular  
31 judgments with regard to LCE, where in my humble submission, two judgments are in conflict  
32 with each other. Therefore, Your Lordships will be required to resolve that conflict. Your  
33 Lordships will kindly take *Punjab and Haryana High Court v. State of Punjab*. Your  
34 Lordships, Volume 6, which we've just handed over, Your Lordships, at page 288. My Lords,

1 on a lighter side, when I was preparing for this, Your Lordships, Punjab seems to be having  
2 the supremacy in service law, Your Lordships. **R. K. Sabharwal** also, Your Lordships, this  
3 judgment also, which is the correct...

4 **JUSTICE VIKRAM NATH:** In supremacy, why only service law?

5 **JUSTICE SURYA KANT:** Service jurisprudence is all given by Punjab now.

6 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

7 **CHIEF JUSTICE B.R. GAVAI:** Why are you leaving Haryana?

8 **VIBHA DATTA MAKHIJA:** Your Lordships, I'm just sharing an observation that I had.

9 **CHIEF JUSTICE B.R. GAVAI:** You have to conclude.

10 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

11 **JUSTICE K. VINOD CHANDRAN:** You have five minutes, yes.

12 **SACHIT JOLLY:** For My Lords' kind information, I was slated to address the Bench on  
13 behalf of the ITAT Bar Association. My Lords, in fact, that application is slightly different. My  
14 Lords may just detag that the issue seems to be there, the issue what we had flagged in our IA  
15 although it...

16 **CHIEF JUSTICE B.R. GAVAI:** That we have...

17 **SACHIT JOLLY:** Yes, My Lords, that's different. That's what I'm saying. Yes, My Lords,  
18 that's what I'm saying. I don't wish to take My Lords' time on that today. My Lords, that's IA  
19 264842.

20 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR] I will tag it with the Madras Bar Association.  
21 That is kept on, I think, next Monday.

22 **SACHIT JOLLY:** Next Monday, My Lords, 3rd, the AGM. I'm so very grateful. My Lords, I  
23 was Serial No. 7.

24 **CHIEF JUSTICE B.R. GAVAI:** Yeah. So your time is saved.

25 **SACHIT JOLLY:** Yes, My Lords. That's right.

- 1 **CHIEF JUSTICE B.R. GAVAI:** So we can rise early today.
- 2 **SACHIT JOLLY:** Grateful, My Lords.
- 3 **COUNSEL 2:** My Lords, for mentioning, if I may, we have filed an IA for impleadment on  
4 behalf of a Promotee District Judge from Kerala. So kindly...
- 5 **CHIEF JUSTICE B.R. GAVAI:** IA for?
- 6 **COUNSEL 2:** For a Promotee District Judge from Kerala, My Lords. So, we have filed on  
7 24th.
- 8 **CHIEF JUSTICE B.R. GAVAI:** Just wait, we are hearing you.
- 9 **COUNSEL 2:** Yes.
- 10 **VIBHA DATTA MAKHIJA:** Mr. Dwivedi's arguments might take time.
- 11 **COUNSEL 2:** Yes, it was mentioned, yes.
- 12 **CHIEF JUSTICE B.R. GAVAI:** Yes, Ms. Makhija.
- 13 **VIBHA DATTA MAKHIJA:** Please, Your Lordships. I was referring to the two conflicting  
14 judgements on LCE matter. Your Lordships may kindly take Volume 6, page 288. This is the  
15 Punjab and Haryana High Court Judgement.
- 16 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 17 **VIBHA DATTA MAKHIJA:** Your Lordships, here, the issue was, again, with regard to the  
18 *inter se* seniority between the three categories Your Lordships. And if Your Lordships just  
19 comes to paragraph 2 for a moment. If I can read that, Your Lordships. "The questions which  
20 have arisen for determination in this batch of appeals relate to *inter se* seniority dispute  
21 between three streams of Punjab Superior Judicial Service, that is officers promoted on basis  
22 of merit cum seniority - 50%, direct recruits - 25% and LCE - 25%," Your Lordships. Then,  
23 Your Lordships will come to para 7 where Rule 12 has been produced. And earlier, Your  
24 Lordships, the seniority rule provided for respective dates of their confirmation. If I can just  
25 read para 7. "Rule 12 dealt with seniority, which provided that seniority *inter se* of the  
26 substantive members of the service, whether direct recruits or promotee officers, shall be  
27 determined with reference to respective dates of their confirmation. On 31st December '76,  
28 Rule 12 was amended, providing that seniority *inter se* of members of service will be

1 determined by length of continuous service on the post in the service, irrespective of the date  
2 of confirmation." So here, the length of service was a part of the rule. Then Your Lordships will  
3 see Issue No. 1 is discussed and Lordships will come to paragraph 44. Your Lordships, I'll just  
4 read this. "A three-judge bench of this court in **Srikant Roy vs. Jharkhand** while  
5 determining question of number of vacancies in respect of LCE exam of Jharkhand as in  
6 Jharkhand Superior Judicial Service has held that cadre strength is always measured by  
7 number of posts comprising the cadre and the percentage of quota has to be worked out in  
8 relation to the number of posts which forms the cadre and has no relevance to the vacancy that  
9 would occur." And then the following was laid down in paragraph 24.

10 And Your Lordships will then come to para 48, which is with regard to, from what date Your  
11 Lordships, the principal must apply, which Your Lordships I just made a brief reference to  
12 with regard to prospective application of the principles of **All India Judges**. If Your  
13 Lordships will kindly take para 48. "This court in **All India Judges Case No. 3** in para 29  
14 has clearly directed that the system which was directed to be put in place by this court *vide*  
15 paras 27, 28 and 29 was to apply prospectively. This court had directed that appropriate rules  
16 and methods will be adopted by High Courts and approved by States wherever necessary by  
17 31st March 2003. Up to 2004, the quota for promotion on basis of merit cum seniority was  
18 75%, cadre strength as on 13-09-2007 was 89, which was increased in 2007 as 107. After the  
19 amendment of the rules in 2004, promotion of 10 officers was made. It is mentioned in civil  
20 appeal of High Court that the cadre strength of Punjab Superior Judicial Services before 2004  
21 was 88. Thus in the year 2004, when the cadre strength was 88, 75% posts were to be manned  
22 by promotees under merit cum seniority, that is 66 were to be manned by promotee officers.  
23 The judgement of this court in **All India Judges** being prospective, the ratio of officers as  
24 existing before unamended rules cannot be adversely affected. A promotee before the  
25 amendment of 2004 Rules, who was well within their quota suddenly cannot go out of the  
26 quota and become an excess merely on the strength of amendment of rules which are  
27 prospective in nature. For determining the quota, the cadre strength which existed prior to  
28 amended rules and subsequent to amended rules have to be treated differently. Promotees  
29 quota, which was 75% prior to 2004 make 66 posts in their quota as before amendment in  
30 2004 where cadre strength has been increased to 107. 18 posts have been further added to the  
31 cadre. This increase having been made after the amendment on cadre strength, the rules as  
32 amended will be applied for bifurcation of quota. On 18 newly created posts, 50% comes to 9.  
33 For the out of turn promotees, 4.5 and direct recruits 4.5. Thus, promotee officers on or after  
34 the increase of cadre will have to be 66 plus 9. That is 75. In the appeal filed by the High Court,  
35 it has also indicated that 10 promotees were affected in 2004 under 50% quota of merit cum  
36 seniority. Rules providing for 25% quota for out of turn promotion being in place, at least few

1 vacancies ought to have been given to the out of turn promotees. There is no detail of further  
2 information." So, Your Lordships, they have held that from 2002 onwards, whenever the rule  
3 was amended, the selections thereafter will have to go by the principles of **All India Judges**  
4 **No. 3** Your Lordships. So my humble submission before Your Lordships is that, post 2002,  
5 state-wise, High Court-wise Your Lordships, whenever the first recruitment is pursuant to the  
6 amended rules, Your Lordships, it has to be, then, obviously will have to be seen by the  
7 different benches, whether they are in compliance with these principles or whether the rules  
8 and all India principles have been violated in the process of selection, because our complaint  
9 before Your Lordships is that our rule provides for a particular aspect. There is an ambiguity  
10 with regard to another aspect, and the rule has been wrongly applied in violation of **All India-**  
11 **Three Judges** matter. So, our humble submission, Your Lordships will be that after  
12 principles are laid down, then every selection will have to be tested against that. Now, Your  
13 Lordships will kindly come to a judgement where the conflict is there, which Your Lordships  
14 will find at page 223 of the same volume. This, Your Lordships pertain to Rajasthan High  
15 Court, and in this, Your Lordships, there was a cycle which was given in the Rajasthan Rules,  
16 which was akin to a roster but what the Rajasthan High Court was doing, Your Lordships, was  
17 placing them *en bloc*. So, if there is a selection of direct recruits, then *en bloc*, Your Lordships,  
18 they would come in that cycle. Then if there is a subsequent or a later selection of LCA, then  
19 *en bloc*, they will come under the direct recruits. Then whenever the selection happens of the  
20 promotees then *en bloc*, they were brought in. And in my humble submission, Your Lordships,  
21 this is in conflict with this principle which has been followed and laid down and approved in  
22 this judgement. Your Lordship is in conflict with all the previous judgements which I have just  
23 shown to your Lordships. And here, this, on this Bench, Your Lordships has approved the *en*  
24 *bloc* aspect against the principle, which is very clear, is that wherever the position is, the person  
25 will come against the post. So here, Your Lordships, they are coming in order of continuous  
26 officiation, so as to speak and in length of service, rather than against the post which is marked  
27 on the roster. Your Lordships will kindly come to para 1.1. And Your Lordships, there was also  
28 an aspect of fast-track court, the *ad hoc* Judges who were appointed again the *ad hoc* posts of  
29 fast-track courts that Your Lordships had already held, so it follows **Brij Mohan Singh**  
30 saying that, "as far as that is concerned, seniority cannot be given in the cadre. That has to go  
31 according to your parent cadre." So, that aspect I'm not touching, Your Lordships. I'm just  
32 touching the aspect with regard to LCE. "Writ petition filed by four petitioners prays for  
33 appropriate directions that after promulgation of Rajasthan Judicial Service Rules 2010, all  
34 appointments ought to be in conformity with 2000 Rules and allocation of seniority must be  
35 in accordance with the cyclic order provided in Schedule 7 to the 2010 Rules. In terms of 2010  
36 Rules, post of cadre of District Judges and higher judicial services in State of Rajasthan was  
37 required to be filled up according to **All India Judges**. This writ petition filed by candidates

1 who were successful in LCE prays that they be allocated seniority in terms of the cyclical order  
2 in Schedule 7. In this group falls writ petition, so and so and so and so." Then the rules are  
3 from paragraph 13 onwards, Your Lordships, where a combined select list and seniority is  
4 given in Rule 42 and 47. Lordships will find it under para 13.6.

5 And then Your Lordships para 40 onwards, and I will not bother to read much of it, I'll just  
6 enunciate the principle, which was set out over here in my humble submission, wrongly so, is  
7 that they accept the fact that it has to be in cyclical order, but in that cycle, they say you have  
8 to place them *en bloc* according to the selection. So, it is not relatable to roster point, but it is  
9 relatable to the date of selection. And para 47.3, Your Lordships, I would like to invite Your  
10 Lordships attention. "In the premise, the conclusion is inescapable that candidates selected  
11 through LCE and direct recruitment *vide* order dated 2013 cannot claim to be clubbed and 47  
12 judicial officers promoted in substantive capacity on 21 for two... in accordance with the  
13 cyclical order. We accordingly answer question 40.3(C) and find that 47 judicial officers are  
14 rightly placed *en bloc* senior to the candidates selected through process initiated pursuant to  
15 notification of 2011." Then, Your Lordships, another point which has been discussed over here  
16 is that merit is the primary criteria in LCE seniority list. So, within the LCE seniority list this  
17 conflict has again arisen whether it has to be seniority cum merit or merit cum seniority and  
18 in para 48, in my humble submission, correctly held so, which has also been subsequently held  
19 in Lordship's 2025 ***All India Judges*** judgement also that within the LCE group the list will  
20 be made in the order of merit. The persons who have qualified in...

21 **CHIEF JUSTICE B.R. GAVAI:** Whatever is their ranking as per the examination.

22 **VIBHA DATTA MAKHIJA:** But, Your Lordships, this principle does not apply to the  
23 promotees list. That, Your Lordships, is Justice Pardiwala's judgement, which is the next  
24 judgement that I'm citing to Your Lordships. That is ***Ravikumar Dhansukhlal***, that is Your  
25 Lordships at page 982, Volume 5A.

26 **CHIEF JUSTICE B.R. GAVAI:** Volume?

27 **VIBHA DATTA MAKHIJA:** 5A. So, I'm just, Your Lordships, bringing to Your Lordships'  
28 notice the principles and then how we will consolidate all the principles, Your Lordships, to  
29 come to a... what should one say?

30 **CHIEF JUSTICE B.R. GAVAI:** What is the name of the judgement?

31 **JUSTICE VIKRAM NATH:** ***Ravikumar***.

1 **VIBHA DATTA MAKHIJA:** *Ravikumar Dhansukhlal vs...*

2 **JUSTICE VIKRAM NATH:** That Gujarat matter.

3 **VIBHA DATTA MAKHIJA:** *High Court of Gujarat*. Yes, Your Lordships. Page 982 of  
4 Volume 5A.

5 **JUSTICE VIKRAM NATH:** Last, but only now in this.

6 **CHIEF JUSTICE B.R. GAVAI:** *Ravikumar Dhansukhlal Maheta?*

7 **VIBHA DATTA MAKHIJA:** Please, Your Lordships, *Maheta*. Now in this, Your Lordships,  
8 the whole concept of seniority cum merit and merit cum seniority was discussed, Your  
9 Lordships, in great detail. And here, the question that had arisen for Lordship's consideration  
10 before that Bench, Your Lordship, was that within the seniority list of the promotees, which  
11 now is 50%, was earlier 65%, within that list will the seniority come according to the qualifying  
12 exam that they hold, or whether it will come according to their date of officiation? So, in this,  
13 they have held, Your Lordships, that the primary criteria in the promotees' list, the exam is  
14 only a qualifying exam. The exam is not testing your exact merit, but it is only a qualifying  
15 exam to take you to the next position. And, therefore, here, the consideration is of seniority in  
16 promotees. Therefore, the person who is senior-most who has qualified, the number of marks  
17 will be irrelevant as long as you are above the benchmark of the passing mark.

18 **JUSTICE VIKRAM NATH:** Above mark, yes.

19 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

20 **JUSTICE B. R. GAVAI:** Limited competence.

21 **JUSTICE VIKRAM NATH:** Limited competence.

22 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships. No, this is with regard to promotees, Your  
23 Lordships. Suitability test, I'm grateful. Yes.

24 **JUSTICE VIKRAM NATH:** 50%.

25 **VIBHA DATTA MAKHIJA:** Yes. Suitability test.

26 **CHIEF JUSTICE B.R. GAVAI:** Suitability test? That's for promotees.

27 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

- 1 **CHIEF JUSTICE B.R. GAVAI:** Not for LCEs.
- 2 **VIBHA DATTA MAKHIJA:** No, no. This judgement, I'm drawing a distinction with regard  
3 to LCE... within the LCE category, the merit list will be drawn according to the marks.
- 4 **CHIEF JUSTICE B.R. GAVAI:** Marks, because it's examination and as far as promotees  
5 are concerned, it is only to find out whether they are suitable. Once they are found suitable,  
6 then their seniority would count.
- 7 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships, absolutely. So, suitability test is not a test  
8 of merit.
- 9 **CHIEF JUSTICE B.R. GAVAI:** It's a test of finding your fitness.
- 10 **VIBHA DATTA MAKHIJA:** That's right, Your Lordships. So that's what has been held in  
11 this judgement, and correctly so, Your Lordships.
- 12 **CHIEF JUSTICE B.R. GAVAI:** This is, I think, referring Gujarat rules.
- 13 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships, this is concerning Gujarat's rules. But  
14 again in Gujarat rules, Your Lordships, while this portion has been clarified, however Your  
15 Lordships...
- 16 **CHIEF JUSTICE B.R. GAVAI:** I'll want some advice also as to what rules should be  
17 followed.
- 18 **JUSTICE VIKRAM NATH:** Because there is no written test for promotion. There is no  
19 written test this time.
- 20 **VIBHA DATTA MAKHIJA:** So LCE exam, Your Lordships, is of five papers, which is the  
21 same as a direct recruit exam, and it is held simultaneously. It is the same paper, except LCE  
22 is exempted from English and general knowledge. For a direct recruit, Your Lordships, you  
23 have to take three law papers, English and general knowledge. It is the same law exam, Your  
24 Lordships. And your merit list is drawn according to your marks in that examination. But this  
25 suitability test is a separate and distinct test.
- 26 **JUSTICE VIKRAM NATH:** There was no suitability test in Gujarat for promotion?
- 27 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

1 **JUSTICE VIKRAM NATH:** I don't know if they have made it now, till 2021, it was never  
2 there.

3 **VIBHA DATTA MAKHIJA:** Well, Your Lordships, of course, has personal experience.

4 **CHIEF JUSTICE B.R. GAVAI:** The Court has advised to frame that.

5 **VIBHA DATTA MAKHIJA:** Your Lordships obviously has first-hand experience. So this is  
6 the distinction I'm drawing, that within the category Your Lordships also there is a method in  
7 that entire madness Your Lordships, which has to be followed. And this judgement, Your  
8 Lordships was followed also thereafter by Justice Nagarathna and Justice Satish Sharma's  
9 bench, Your Lordships, which Your Lordships will just note the citation is **2025 6 SCC 416**.  
10 Your Lordships will not find it in any of the compilations, it's a recent judgement.

11 **JUSTICE VIKRAM NATH:** Why do we need that judgement? It only follows it just all.

12 **VIBHA DATTA MAKHIJA:** I'm just giving the citation.

13 **JUSTICE VIKRAM NATH:** Unnecessarily adding...

14 **VIBHA DATTA MAKHIJA:** Now Your Lordships two things I just want to show. Lordships  
15 had asked for a comparative rules of the various High Courts, which my associates have  
16 extracted the relevant rules of various High Courts as just illustrative Your Lordships. And the  
17 rules will show the root of the problem, that every High Court is grappling with. Your  
18 Lordships will recollect the second line of para 27 of **All India judges- 3** that there are three  
19 streams for this cadre and those three streams Your Lordships promotion LCE...

20 **JUSTICE SURYA KANT:** The officer you are presenting belong to which state?

21 **VIBHA DATTA MAKHIJA:** LCE cadre.

22 **JUSTICE SURYA KANT:** No, but which state?

23 **VIBHA DATTA MAKHIJA:** Uttar Pradesh.

24 **JUSTICE SURYA KANT:** Let us see Uttar Pradesh rules.

25 **VIBHA DATTA MAKHIJA:** Yes, I've extracted these. If Your Lordship just sees the first  
26 serial number itself, it is the Uttar Pradesh rules. Now Your Lordships Rule No. 6 prescribes

1 the quota and all these rules will be prior to the '25 judgment, so they'll all be 10% instead of  
2 25.

3 **CHIEF JUSTICE B.R. GAVAI:** That will have to be changed now.

4 **VIBHA DATTA MAKHIJA:** But that will be changed accordingly. Your Lordships, Rule 22  
5 is the methodology of appointment. Now, in this, Your Lordships will see, "subject to  
6 provisions of Sub rule- 2, the Governor shall on receipt from court of the list mentioned in  
7 Rules 18, 20 and 21 make appointments to the service on occurrence of substantive vacancies  
8 by taking candidates from the list in order in which they stand in the respective list in  
9 accordance with roster." So, this is with regard to the civil judge, how they stand in that roster.  
10 "Appointments to the service shall be made on the basis of roster system. The first post shall  
11 be filled from the list of promotees. Second post shall be filled by direct recruit. Third and  
12 fourth post shall be filled up from list of promotees and fifth post will be filled up by candidates  
13 selected strictly on merit through LDCE according to roster as prescribed in Appendix 1, which  
14 will cease to become operative on the date of respective three streams achieving their full  
15 allotted vacancies. Thereafter on account of arising of any vacancy in quota of respective  
16 stream the same should be filled up from the stream where the vacancy arises."

17 So, here Your Lordships will see in Appendix 1. Your Lordships, I have produced Appendix 1,  
18 the last sheet in this set of papers. Here is a 100 point roster which has been prescribed as per  
19 Appendix 1. Then Your Lordships will see proviso, "that while following the roster, at no point  
20 of time, the respective percentage of posts filled from direct recruit and LDCE shall exceed  
21 25% and 10% of the strength of service. In case the percentage is exceeding the allotted quota,  
22 in such eventuality promotee shall occupy the vacancy, which would have gone to direct recruit  
23 or LDCE had not the same be in excess of 25% and 10% respectively, either of the two." Again,  
24 on the principle to be filled up, the percentage cannot go beyond. So, there should not be  
25 overrepresentation or underrepresentation. So, that adjustment is to be made.

26 Now Your Lordship, subsection (iii) is a little bit of a thing which needs some focus. "In the  
27 eventuality of delay in making appointment under Sub-rule 1 and further is exigency of service  
28 so requires, the Governor may, in consultation with court, make short term appointment as a  
29 stopgap arrangement from among the promotees in vacancy in those services till  
30 appointments are made in Sub-rule 1 and 2. Provided that period of service spent by  
31 promotees on short term appointment to service a stopgap arrangement shall not be computed  
32 under Rule 26."

1 So, seniority will not be computed by officers; it will be computed according to your number  
2 on the roster. Rule 26, Your Lordships, deals with seniority. "Seniority of officers appointed in  
3 the service here it, is AJS service, shall be determined in accordance with the order of  
4 appointment in service under Sub-rule 1 and 2 of Sub-rule 22 of these rules. Seniority of  
5 members of service who have been confirmed in the service prior to commencement of these  
6 rules shall be as has been determined by the order of government, as amended from time to  
7 time." Now Your Lordships, this rule is perfect on paper, but in application, and I will show  
8 from my application, the manner in which it is being applied is that instead of the roster  
9 starting as a running account, unfortunately, it is being applied selection to selection. So,  
10 instead of cadre, the roster should be strictly applied to the cadre, but it is being applied to  
11 selections. So, that is the reason why this anomaly is existing. If the roster is strictly followed,  
12 which Your Lordships have said in the *Gujarat* judgement that it must be strictly followed in  
13 accordance with *All India Judges*, then that anomaly would not arise. And I can directly,  
14 Your Lordships, show that if Your Lordships take my written submission, Volume 6.

15 **JUSTICE SURYA KANT:** Why we are not considering individual seniority?

16 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships, I am...

17 **JUSTICE SURYA KANT:** Presenting two, three officer, you don't know how many officers  
18 you are [UNCLEAR].

19 **VIBHA DATTA MAKHIJA:** Only by way of example, as a principle...

20 **JUSTICE SURYA KANT:** We told you, that have to be a general principle that what should  
21 be the...

22 **RAKESH DWIVEDI:** A petition in the Hight Court which was considered and dismissed.  
23 They have filed an SLP which is pending before Justice Dipankar Datta. They are raising all of  
24 these issues.

25 **VIBHA DATTA MAKHIJA:** No, I'm not raising. I'm showing the example, Your Lordships.  
26 I'm not raising that issue.

27 **JUSTICE SURYA KANT:** You can say that rule is bad or you can say rule is good. It should  
28 be fold to a uniform basis.

29 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

1 **JUSTICE SURYA KANT:** But how the rule has been interpreted in a particular case, or how  
2 the High Court has determined, that we can't go into the rules of the High Court's claims.

3 **VIBHA DATTA MAKHIJA:** Now Your Lordships, in accordance with the '25 judgement,  
4 the only High Court which has come with the 10% with regard to Civil Judges, Your Lordships  
5 is Bihar and they have notified these, Your Lordships in, I think, 4th October 2025. At Number  
6 2, Your Lordships have extracted these rules. And the point I'm drawing Your Lordship's  
7 attention to is the proviso, which says that the date of appointment and officiation will not be  
8 the determining factor. On that aspect, most of the rules are silent, so therefore, the High  
9 Courts are applying them in different, different ways. And in comparison, Your Lordships may  
10 see at Number 3, West Bengal Rules. And Rule 26(2). I'm sorry, Rule 31, regarding seniority,  
11 is with the method that is provided is continuous officiation. So, there is great variety and  
12 variation amongst all the High Courts and in my humble submission, Your Lordships, this  
13 uniformity is the guidance which we desire from Your Lordships.

14 Just one more aspect, Your Lordships. I wanted to point out to Your Lordships is with regard  
15 to the *All India Judges*, '25 judgement, Your Lordships may find that at Volume 5A page  
16 873. Because in my humble submission, Your Lordships the '25 judgement reiterates each and  
17 every principle which I have just placed before Your Lordships, the only change being the  
18 numerical aspect and introduce... introduction of LCE with regard to civil judges, 10%. Your  
19 Lordships, the conclusions in para 89 and each one of them are important Your Lordships,  
20 because each one of them is with regard to every aspect. May I just read para 85, sub-para 1.  
21 "In view of the above discussion, we issue the following..."

22 **CHIEF JUSTICE B.R. GAVAI:** Just a minute.

23 **VIBHA DATTA MAKHIJA:** I'm sorry. Page 903, Your Lordships, 903. Volume 5A, para 89.

24 **CHIEF JUSTICE B.R. GAVAI:** Yes.

25 **VIBHA DATTA MAKHIJA:** "In view of the above aforesaid discussion, we issue the  
26 following directions. Number one, all the High Courts and State Governments in the country  
27 shall amend the relevant service rules to the effect that the quota for reservation of LDCE for  
28 promotion from cadre of Civil Judge, Senior Division to Higher Judicial Service is increased  
29 to 25%." So, Your Lordships, in conclusion from 2002 to 2010, which is when Justice  
30 Balakrishnan's judgement came, the quota was 25. From 2010 to 2025, the numerical will  
31 change to 10%. Prior to 2002 to 2010, the numerical remains... 2010 to 2025, numerical  
32 remains 25 and will now continue to be 25.

1 "Number 2, all the High Courts and the State Governments in the country shall amend the  
2 relevant service rules to the effect that the minimum qualifying service required to appear is  
3 three years." So, now Your Lordships, that qualifying service aspect. Number 3, Your  
4 Lordships, have introduced 10% LCE with regard to Civil Judge, Senior Division. And in my  
5 humble submission, this will also take colour from how the LCE of 25% is affected, Your  
6 Lordships. So, the manner in which LCE of 25% with regard to District Judges is affected, the  
7 same way the LCE with regard to Civil Judges will be affected.

8 Then, Your Lordships, number 4 is a little significant. "Needless to say that if any post reserved  
9 for LDCE for either Civil Judge or of the higher judiciary remains vacant, the same shall be  
10 filled through regular promotion on basis of merit cum seniority in that particular year. Filling  
11 up the vacant post in the ratio considered for LDCE will have to be carried out from  
12 simultaneous selection process carried out for regular promotions in the same year." This  
13 might need a little clarification, Your Lordships, because this is now with regard to vacancy.  
14 So, in compliance with *Mazhar Malik*, Lordships have said that every year all the vacancies  
15 must be completed.

16 So, if you don't find sufficient number of LCE candidates, then you fill it up by regular  
17 promotees. But, Your Lordships, the seniority list will not be affected by this. So, even if a  
18 promotee has come up earlier because no LCE 25% were there, Your Lordships, then the  
19 seniority will be worked out according to the roster point again. So, a promotee which has  
20 come in, say, in 2010, because 10% LCE persons were not there, only, say, 3% came in. Then  
21 7% had to be filled up by promotees. But the seniority, Your Lordships, the person who comes  
22 under the... in the next selection in LCE will go higher than the promotee, because the roster  
23 point is higher.

24 **CHIEF JUSTICE B.R. GAVAI:** No. But then we are arguing contrary to what Mr. Dwivedi  
25 just now argued.

26 **VIBHA DATTA MAKHIJA:** Your Lordships that's the dichotomy between the promotees  
27 and the LCE persons, because promotees are saying, club us all together. So whether an LCE...  
28 and that is the whole disincentive aspect. As far as an LCE is concerned, Your Lordships, if I  
29 am coming in the order as a promotee.

30 **CHIEF JUSTICE B.R. GAVAI:** So you want a separate... put in separate cadre of LCE?

31 **VIBHA DATTA MAKHIJA:** It is already provided.

- 1 **JUSTICE VIKRAM NATH:** Whichever year you are selected, you will get into that position.  
2 How can you...
- 3 **CHIEF JUSTICE B.R. GAVAI:** Jump over.
- 4 **JUSTICE VIKRAM NATH:** Jump over all those who have been promoted earlier?
- 5 **VIBHA DATTA MAKHIJA:** I'm just explaining Your Lordships. Here...
- 6 **JUSTICE VIKRAM NATH:** Clearly because in the previous year LCE quota was not filled  
7 up.
- 8 **VIBHA DATTA MAKHIJA:** Yes Your Lordships.
- 9 **JUSTICE VIKRAM NATH:** The full extent.
- 10 **VIBHA DATTA MAKHIJA:** Because Your Lordships if I am coming along with my  
11 promotees. Suppose my promotion is happening along with in the same order, Your  
12 Lordships. Then I don't even have a jump.
- 13 **JUSTICE VIKRAM NATH:** *Haan* that is different, but somebody who was promoted in  
14 previous year and regular promotion [UNCLEAR].
- 15 **CHIEF JUSTICE B.R. GAVAI:** You don't have a jump because you did not clear it earlier.
- 16 **VIBHA DATTA MAKHIJA:** No, Your Lordships that's the problem. The problem is this.  
17 The incentive... What is the incentive which Lordship provides? The incentive that Lordship  
18 has provided...
- 19 **JUSTICE VIKRAM NATH:** Incentive is that with a lesser number of years you are now in  
20 the higher judicial service.
- 21 **VIBHA DATTA MAKHIJA:** That's why I wanted to show my selection list of LCE.
- 22 **CHIEF JUSTICE B.R. GAVAI:** We are not going to the facts of the case.
- 23 **VIBHA DATTA MAKHIJA:** No, I'm putting that aspect before Your Lordships because in  
24 fact, this does not happen, and the numbers and the data have established that the LCE  
25 persons are not going higher in seniority. They are still coming behind the promotees and, in  
26 fact if I am coming...

1 **CHIEF JUSTICE B.R. GAVAI:** If that would have been so then they would not even opt for  
2 a LCDE. If they are going below the regular promotee why would person go and opt for an  
3 examination?

4 **VIBHA DATTA MAKHIJA:** The aspect that I'm clarifying here, Your Lordships, is that  
5 suppose it is a 2010 vacancy.

6 **CHIEF JUSTICE B.R. GAVAI:** There are four more counsels after you.

7 **VIBHA DATTA MAKHIJA:** Your Lordships this is a little tricky aspect. Just two minutes  
8 I'll take on it. If it is a 2010 vacancy Your Lordships and 10% LCE vacancies and 50% promotee  
9 vacancies. Now LCE Your Lordships, 10% don't get selected in 2010, only 2% get selected.  
10 Then when the next selection takes place, say in 2012 and an LCE gets selected, Your  
11 Lordships, so that LCE will steal a march over the promotees will have to come higher than  
12 the promotees. This is what I am saying.

13 **CHIEF JUSTICE B.R. GAVAI:** So irrespective of the promotees having been promoted  
14 earlier, you want the seniority to be given to you above them.

15 **VIBHA DATTA MAKHIJA:** Your Lordships, according to the roster post. Because if in the  
16 roster, if Your Lordships...

17 **CHIEF JUSTICE B.R. GAVAI:** In a nutshell Mr. Dwivedi opposes the roster system. He  
18 says that the roster has to come to an end at the end of the judicial process...

19 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

20 **CHIEF JUSTICE B.R. GAVAI:** And you are supporting the roster.

21 **VIBHA DATTA MAKHIJA:** [UNCLEAR] account which even *Sabharwal* says.

22 **CHIEF JUSTICE B.R. GAVAI:** So you want it to continue endlessly?

23 **VIBHA DATTA MAKHIJA:** Your Lordships that's what *Sabharwal* says. *Sabharwal*,  
24 which has been consistently followed, says whenever there is a debit, then you credit it from  
25 that category. What is the point?

26 **CHIEF JUSTICE B.R. GAVAI:** Suppose a person who is promoted three years earlier as a  
27 district judge on account of his seniority.

- 1 **VIBHA DATTA MAKHIJA:** Yes.
- 2 **CHIEF JUSTICE B.R. GAVAI:** If you get selected through LDCE, then you will be shown  
3 senior to him, though he's got...
- 4 **JUSTICE VIKRAM NATH:** That is because the roster point was taken [UNCLEAR].
- 5 **VIBHA DATTA MAKHIJA:** That is only my incentive otherwise then I will come by  
6 promotion. That was what the whole thing is. If Your Lordships will just give me a second and  
7 Lordships will see this roster for a moment, just to explain it Your Lordships. Lordships sees  
8 that the first is a promotee, next is a direct recruit, two promotees and then LDCE. Now,  
9 suppose the LDCE post doesn't get...
- 10 **JUSTICE VIKRAM NATH:** That was where all selections are taking place at the same time,  
11 and they are coming, this is how it would be filled up.
- 12 **VIBHA DATTA MAKHIJA:** Please Your Lordships.
- 13 **JUSTICE VIKRAM NATH:** But if you are coming subsequently after three years, four years  
14 or two years then you are there to fill up that post but you cannot get that seniority.
- 15 **VIBHA DATTA MAKHIJA:** Because...
- 16 **JUSTICE VIKRAM NATH:** Fall in that LCE quota, only the quota is available. Posts are  
17 vacant for LCE, you can be taken up, but you cannot get that seniority, back dated seniority.
- 18 **VIBHA DATTA MAKHIJA:** If Your Lordship sees that suppose this LDCE post is not filled  
19 up. Suppose in this selection this doesn't get filled up, so Your Lordships have said that the  
20 vacancy should be filled up by a promotee.
- 21 **CHIEF JUSTICE B.R. GAVAI:** Correct.
- 22 **VIBHA DATTA MAKHIJA:** So does that promotee steal a march over the other persons?  
23 He then steals a march.
- 24 **CHIEF JUSTICE B.R. GAVAI:** When does he steal a march, he comes through regular  
25 promotion.
- 26 **VIBHA DATTA MAKHIJA:** Your Lordships, then again the same thing is happening.

- 1 **CHIEF JUSTICE B.R. GAVAI:** But this appears to be totally hypothetical, because  
2 nobody... if you are in a normal mode of promotion he is entitled to be there. Why would you  
3 go for LDCE, prepare for the examination, do study?
- 4 **VIBHA DATTA MAKHIJA:** Precisely. That is the point I'm saying, Your Lordship.
- 5 **CHIEF JUSTICE B.R. GAVAI:** Correct.
- 6 **VIBHA DATTA MAKHIJA:** If I am not getting higher...
- 7 **CHIEF JUSTICE B.R. GAVAI:** Anyway, it's...
- 8 **VIBHA DATTA MAKHIJA:** If I am not getting higher seniority...
- 9 **JUSTICE K. VINOD CHANDRAN:** We will examine your...
- 10 **CHIEF JUSTICE B.R. GAVAI:** Don't appear for that.
- 11 **VIBHA DATTA MAKHIJA:** That's why, My Lord, people were not appearing.
- 12 **CHIEF JUSTICE B.R. GAVAI:** No, no. People were not appearing because they would  
13 otherwise be promoted in the normal pool by the time they were eligible for LDCE. Therefore,  
14 we reduced that 10 years to 7 years.
- 15 **JUSTICE K. VINOD CHANDRAN:** 7 years.
- 16 **VIBHA DATTA MAKHIJA:** Pointing out, there are two aspects. One is increase of the pool.  
17 There was not a sufficient pool for persons to take the exam.
- 18 **CHIEF JUSTICE B.R. GAVAI:** Now, there is.
- 19 **VIBHA DATTA MAKHIJA:** Now there is, Your Lordships.
- 20 **CHIEF JUSTICE B.R. GAVAI:** Your argument is totally contrary.
- 21 **VIBHA DATTA MAKHIJA:** No.
- 22 **CHIEF JUSTICE B.R. GAVAI:** You are saying that there were not a sufficient pool and then  
23 you are also saying that out of 10%, only three posts were filled and seven were vacant.

1 **VIBHA DATTA MAKHIJA:** No, Your Lordships, for the reason that people did not qualify.  
2 So, the people who have qualified, must be...

3 **CHIEF JUSTICE B.R. GAVAI:** Anyway, you must give time to others also.

4 **VIBHA DATTA MAKHIJA:** Yes, Your Lordship. So that is the point that I'm making, and  
5 Your Lordships with regard to the rest of the two-three points in the '25 judgement, Your  
6 Lordships, the...

7 **CHIEF JUSTICE B.R. GAVAI:** There are five more Counsels.

8 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships.

9 **CHIEF JUSTICE B.R. GAVAI:** You have almost taken an hour, more than an hour.

10 **VIBHA DATTA MAKHIJA:** Yes, Your Lordships. And then on the prospectivity aspect,  
11 which I've just explained to Your Lordships, that from which date, the selections have to be  
12 considered, Your Lordships.

13 **CHIEF JUSTICE B.R. GAVAI:** Yes.

14 **VIBHA DATTA MAKHIJA:** Grateful.

15 **V. GIRI:** May I, please, Your Lordships? I am appearing for the Kerala High Court. I am not  
16 getting into My Lord right, manner in which the LCE will have to be promoted the date on  
17 which they should be assigned seniority, all the promotees will have to be. Question which has  
18 been referred to Your Lordships is only this, therefore I make limited submissions, My Lord.  
19 The High Court cannot be seen as taking sides with one group.

20 **JUSTICE VIKRAM NATH:** Promotees and direct recruits.

21 **V. GIRI:** And I have not done so in my written submissions also. That's why I prefer to do in  
22 the sequence, My Lord, I had to come immediately after the Amicus, I thought let the  
23 contesting parties make their submissions and I will only place before Your Lordships where  
24 probably the High Court could do with some guidance from Your Lordships court in this. What  
25 should be the criteria for determining seniority in the cadre of higher judicial service? My Lord,  
26 the rules have been placed on record and the rules, Your Lordships get it at... Our written  
27 submission to the High Court starts at page 100.

28 **CHIEF JUSTICE B.R. GAVAI:** Of?

- 1 **V. GIRI:** Of Volume 1. I have given a point-wise submission at page 101. It starts at page 100.  
2 At 101, I have My Lord, given a point-wise submission. My Lord, the legal submissions have  
3 been given at page 102. I'll just take Your Lordships to... The rules are at Volume 3(A), but if  
4 Your Lordships have the affidavit filed by the High Court earlier, A-230675 of 25.
- 5 **COUNSEL:** Sir, the rules are at page 418 of the compilation, Volume 4A, 418.
- 6 **V. GIRI:** Volume 4A, page 418.
- 7 **JUSTICE VIKRAM NATH:** Volume 4A, page?
- 8 **V. GIRI:** 418. My Lord, Rule 13...
- 9 **JUSTICE VIKRAM NATH:** 418. PDF page is 428?
- 10 **V. GIRI:** PDF page 428.
- 11 **JUSTICE VIKRAM NATH:** PDF page is 428?
- 12 **V. GIRI:** 428. My Lords, got it? My Lord, Rule 1(iii), "15% of the post in the service shall be  
13 in super timescale and 35% of the posts in the service shall be selection grade."
- 14 **CHIEF JUSTICE B.R. GAVAI:** You are reading Rule 1(iii)?
- 15 **V. GIRI:** Sorry?
- 16 **JUSTICE VIKRAM NATH:** Rule 2(i).
- 17 **V. GIRI:** Rule 1, sub-rule 3.
- 18 **JUSTICE VIKRAM NATH:** Rule 1, Sub rule 3?
- 19 **V. GIRI:** Sub rule 3.
- 20 **JUSTICE VIKRAM NATH:** 15% of posts?
- 21 **V. GIRI:** Yes, My Lord. "15% of the post in the service shall be in super timescale and 35% of  
22 the posts in the service shall be in selection grade." If Your Lordships kindly com to next page  
23 sub rule 2 of rule 2.
- 24 **CHIEF JUSTICE B.R. GAVAI:** Appointment to 35%?

1 **V. GIRI:** "Appointment to 35% selection grade posts in the service shall be made by the High  
2 Court with effect from 1st January '20 from amongst the members of the service on the basis  
3 of merit and ability, seniority being considered only where merit and ability are equal, only  
4 approved probationers with five years' service shall be eligible for being considered for  
5 promotion to the selection grade. Appointment to 15% super timescale posts in the service  
6 shall be made by the High Court with effect from 1st January '20 from amongst the members  
7 of the service holding selection grade posts on the basis of merit and ability, seniority being  
8 considered only where merit and ability are equal. No person promoted to selection grade shall  
9 be eligible for appointment to super timescale unless he has completed three years in selection  
10 grade."

11 Then My Lords, the Rule 5, "Appointing authority." 5(i) "All appointments to the service  
12 referred to in Item A, B and C of sub rule 1 of rule 2 which is, My Lord, that 50%, 25% and now  
13 25% recruitment to the Higher Judicial Service shall be made by the Governor in consultation  
14 of the High Court." Therefore, the High Court prepares... High Court contests the selection  
15 and then, My Lord, the Order of Appointment is issued by the Governor. Then 2, "All  
16 appointments of the selection grade and super timescale posts shall be made by the High  
17 Court." Therefore, My Lord, once you are in service, then the question of appointment to  
18 selection grade and super timescale, which is, My Lord, the same Higher Judicial Service itself  
19 is made by the High Court.

20 Rule 3, My Lord, captures the roster system. "Appointments to the service shall be made on  
21 basis of roster system. The first post shall be filled from the list of promotees. Second post shall  
22 be filled by direct recruitment. Third and fourth by the list... from the list of promotees. And  
23 fifth post shall be filled by the candidate selected strictly on merit through Limited Competitive  
24 Examination and so on according to the roster that's prescribed in the Appendix." I have given  
25 the Appendix, My Lord, it's a 40-point roster, "To these rules, which will cease to operate on  
26 the day the respective three streams achieve their full allotted vacancies. Therefore, on account  
27 of arising any vacancy in the quota of the respective stream, the same shall be filled from the  
28 same stream of which vacancies arise, provided that while following the roster, at no point of  
29 time, the respective percentage of posts filled by direct recruitment in Limited Competitive  
30 Examination shall exceed 25% and 10%."

31 Now it must be 25% and 25% of the cadre strength of service. "In case a percentage is exceeding  
32 the allotted quota, the promotee shall occupy the vacancy which would have gone to the direct  
33 recruit or Limited Competitive Examination." My Lord, the rules do not provide for a post of  
34 Principal District Judge. Therefore, My Lord, I have made it clear in my affidavit and the  
35 written submissions that is an administrative assignment of work and fixation by the High

1 Court. Generally, My Lord, though ability is also taken into account, seniority is also taken into  
2 account and therefore, My Lord, one amongst the District Judges will have to be posted as a  
3 Principal District Judge generally. Generally it goes by the seniority also, but availability and  
4 merit are also looked into.

5 And, My Lord, one question on which, My Lord, we have tried to make a submission is this,  
6 when it comes to the question of assignment of seniority amongst the District Judges in the  
7 higher judicial service, which is a question, which Your Lordships are grappling with. My Lord,  
8 promotees come in, LCE comes in, direct recruitment is supposed to be made every year, but  
9 as Your Lordships would have noted and Your Lordships would have observed, My Lord,  
10 innumerable times with Your Lordships' rich experience, it would have been very good, My  
11 Lord, if the direct recruitment takes place every year, depending upon the number of vacancies  
12 which are notified, but the selection starts from the 1st January but unfortunately more times,  
13 more often than not it gets grappled in either some litigation or the selection gets dragged  
14 along. With the net result that, the vacancies which are to be filled up by direct recruitment in  
15 a particular year for example, '23 maybe may get filled up only in the year '24. It has happened  
16 in the Kerala High Court more than once, and the matter has reached up to this Honourable  
17 Court also My Lord. I also had an occasion to appear for the High Court in more than one case.  
18 But point is this My Lord. Therefore, this 25% vacancies in the post of District Judges at the  
19 higher judicial service which has to be filled up by direct recruitment, may not get filled up in  
20 the same calendar year as such, but vacancies My Lords... vacancies which have to be filled up  
21 by promotees and LDC...My Lord in Kerala, more often than not we actually get 10% more...  
22 enough number of candidates to fill up the 10% and definitely... and fill up the 25% and  
23 definitely the 10%. That does here hitherto My Lord been the experience. Now once they come  
24 in, the question of *inter se* seniority amongst them suppose we go by the principle that, it is  
25 from the date on which they come into the cadre, then there cannot be any confusion regarding  
26 that. But what happens in a case where direct recruits who are recruited against vacancies that  
27 are notified in '22 actually come into the service in '23 or actually are appointed in '23? Do  
28 they get seniority from '22 or do they get seniority only from '23? One. Secondly, insofar as  
29 promotees are concerned, it can happen the other way also. Promotees are concerned My Lord.  
30 If promotions are delayed for one reason or the other, and promotions, the vacancies had  
31 arisen in '22, but the promotees are actually, they enter the cadre, they are appointed only in  
32 '23. Do they go by the date on which the vacancies had arisen? It happens in the case of LDCE.

33 Now My Lord, one aspect on which we have made a submission and I confined myself only to  
34 that. My Lords see, higher judicial service My Lord, discharge of duties among... in the higher  
35 judicial service would take in not only discharge of judicial functions, but it also concerns itself  
36 with certain categories of certain aspects of administrative experience as well. If one is being...

1 and if somebody in the higher judicial service is being groomed for higher duties as such,  
2 therefore there is a legitimate aspiration that is felt by the members of the higher judicial  
3 service. And there's nothing wrong in that.

4 The recent judgement whereby Your Lordships have reviewed ***Dheeraj Mor***, that is,  
5 ***Rajaneesh***, what Your Lordships have said is that, one year of judicial service or experience  
6 which a person acquires after serving as a civil judge junior division or a civil judge senior  
7 division can be taken into account for a multiple years of Bar experience, for the purpose of  
8 calculating the requisite years of service under 233. Principle would apply even when it comes  
9 to the question of assignment of seniority *inter se* amongst the members of the judicial service.  
10 This My Lord, I say but with great respect from the context of... from the perspective of the  
11 High Court when we have to consider as a High Court on the administrative side, we also  
12 consider how to place persons who have those persons who have rendered, say, 15 years, 20  
13 years, or 25 years. This is not for the purpose of creating a cadre in the cadre. That is not what  
14 is contemplated and then rules do not provide for anything. But in posting a person as a  
15 Principal District Judge or assigning him seniority for higher functions as such, without there  
16 being any support from the statutory rules as such, and the rules are a product of successive  
17 directions that Your Lordships have issued in the ***All India Judges Association*** case and  
18 in some cases in ***Malik Mazhar*** also.

19 Would Your Lordships consider it appropriate to give guidelines as to whether it is permissible  
20 for the High Court to say that after persons have come into the higher judicial service, that  
21 some weightage could be given to those persons who have rendered service in the subordinate  
22 judiciary for 15 years, 20 years, or whatever it is, some weightage could be given over and above  
23 the roster which is reflected My Lord in 5(3) which Your Lordships have seen. My Lord, 5(3),  
24 the roster. And this My Lord we say with some trepidation that it has not been possible My  
25 Lord for uniformly implementing the roster over these PS though it has been introduced in  
26 2020. That's the default but that is how it has happened. Therefore, to some extent if your  
27 Lordships find it permissible that some weightage could be given to length of service by or My  
28 Lord rendered by promotees, then Your Lordships could direct the High Court. Your Lordships  
29 could direct all the High Courts across the Board to consider whether it could be taken into  
30 account. It should be left to the discretion of the High Court, My Lord, on the question of  
31 assessment of merit and suitability. But when it comes to the question of, My Lord, there could  
32 be an objective criteria that is drawn up for the purpose of giving a weightage on first service  
33 rendered by them, My Lord the service rendered prior to coming into the higher judicial  
34 service. It is not to create the cadre. It is only to see, My Lord, that rich experience that these  
35 persons have gained do not go unnoticed. And this is for the simple reason that generally  
36 persons in the age group of 35 to 37 become District Judges on direct recruitment. LDCE

1 probably stands on a slightly different footing, but promotees are concerned even when they  
 2 start service now, My Lord, during the last few years at the age of 23 or 24, because Bar  
 3 experience is not considered to be mandatory. Even then, even then My Lords, persons get  
 4 into civil judicial service around about the age of 28, 29, 30. That is how it happened My Lord,  
 5 when there is high competition that is felt at the stage of recruitment into the entry cadre. And  
 6 definitely My Lord, they could come into the higher judicial service only and that's what we  
 7 have stated in the affidavit around the age of 48, whereas in the case of direct recruitment, the  
 8 average age is 42. And therefore, My Lord, as an administrative institution...

9 **JUSTICE K. VINOD CHANDRAN:** Average age is 42, entry point?

10 **V. GIRI:** Entry point. Direct recruitment. Average age for direct recruits. The other one is 48.  
 11 I put it on affidavit also. This is a data, My Lord that we have compiled, and this is the data  
 12 that we have placed before Your Lordships. Average age during the last five years. Principal  
 13 District Judge is not a post which is covered by the rules, but it is required. And therefore,  
 14 when we choose that, we normally, therefore, we go with the seniority, merit and suitability  
 15 are equal assets. Therefore, we go by seniority. But in that, is it possible that Your Lordships  
 16 could lay down some guidelines which would still My Lord, retain with the High Court a  
 17 modicum of discretion in the question of giving some weightage to those persons who have  
 18 come through the promotee channel when it comes to the question of assignment of  
 19 responsibilities as a Principal District Judge? This is all what we have sought for some  
 20 guidance from Your Lordships.

21 And My Lord, one submission is, none of the judgements My Lord of this Honourable Court  
 22 say that a valid criteria cannot be adopted for the purpose of assignment of an advantage or  
 23 an advantage to a person within the cadre. For example, My Lord, higher educational  
 24 qualification can be taken note of in *Khosla's* judgement. It has been mentioned, cannot be  
 25 in such circumstances, it is found to be not violative of 14 and 16. Lengthier service, in judicial  
 26 service can also therefore, be taken note of for the purpose of giving some weightage in  
 27 accordance with objective criteria. In accordance with objective criteria. If Your Lordships lay  
 28 down that principle and that is an answer to the question that is referred to Your Lordships, it  
 29 would not in any manner violate 14 and 16. None of the judgements of this Honourable Court  
 30 would say that that would amount to a creation of a cadre within the cadre. No, that is not  
 31 what it is meant for. It is not for the purpose of not creating a sub-cadre. It is only for the  
 32 purpose of taking note of a valid criteria for the purpose of assigning seniority within the high  
 33 judicial service because anyway My Lord, it is not on seniority that elevation My Lord, to the  
 34 High Court is determined on. Therefore, it's only for the purpose of determining whether a  
 35 higher responsibility can be assigned to those persons who are serving in the higher judicial

1 service, namely, My Lord, Principal District Judge essentially, of a selection grade, of a super  
2 timescale as such. My Lord, it is only for that purpose that we have ventured to make the  
3 submissions before Your Lordships. We, obviously, cannot say that this should be giving an  
4 advantage either to the promotees or to the direct recruits or to the LDCEs as such. My written  
5 submissions are also confined only to them. Grateful.

6 **ATUL YESHWANT CHITALE:** The advantage of coming, My Lord, in the end is that, My  
7 Lord, most of what I had to argue has already been argued. Therefore, I'll limit my submission,  
8 My Lords. I, My Lords, appear for the promotees My Lords, in the State of Punjab. That's the  
9 category that I represent. And My Lord just like the *amicus curiae*, My Lords, had given three  
10 alternative suggestions. One is, he said parallel stream. Second, he said weightage and third,  
11 he said, was reservation of 50-50. We don't agree with that, My Lords, 50-50 reservation. Your  
12 Lordships have already in the **third All India** case said, 75-25-25. It got reduced to 65, but  
13 now it's restored to 75-25-25. Therefore, My Lords, I'll cut short my submission. As far as  
14 weightage is concerned, My Lords, I adopt the submission made by the *amicus curiae* as well  
15 as what Mr. Giri has said right now. Weightage, we are agreeable for, My Lords, because that  
16 will at least allow us some better opportunity at the time when the promotion has occurred.

17 The second, My Lords, submission, which I make is that there could possibly be three parallel  
18 streams. One stream for 75%, one stream for 25%, and one stream for... sorry, sorry. 50%, 25%  
19 and 25%, three parallel streams, My Lords. And all of those streams, My Lords, the *inter se*  
20 seniority of the persons in those streams should be maintained separately, My Lords. And they  
21 will compete at the time... they will actually just come into the zone of consideration based on  
22 their *inter se* seniority. And out of the persons in the zone of consideration, each one of the  
23 list, My Lords, whoever is appointed in accordance with the rules will go. That is the  
24 submission that I'm making. I have filed a written submission... PDF. PDF 113. My Lordships  
25 has the physical paper book? Page 113.

26 **JUSTICE VIKRAM NATH:** 111.

27 **ATUL YESHWANT CHITALE:** 111 is my written submission, at 113.

28 **JUSTICE VIKRAM NATH:** You want to read at 113?

29 **ATUL YESHWANT CHITALE:** Yes, I want to read at 113, para 8.

30 **JUSTICE VIKRAM NATH:** Table 2?

1 **ATUL YESHWANT CHITALE:** Table 2, because it shows the poor representation of  
2 promotees as compared to their total induction strength.

3 **JUSTICE SURYA KANT:** So you will review the judgement?

4 **ATUL YESHWANT CHITALE:** I'm not asking Your Lordships to review the judgement.  
5 My Lords, to the extent of para 20, yes, My Lord. To that extent, yes, My Lords.

6 **JUSTICE SURYA KANT:** That's why we are indicating.

7 **ATUL YESHWANT CHITALE:** Correct, My Lord, to that extent, yes. But, if Your Lordships  
8 sees, My Lord, para 8. The total strength is 202 of the... out of that, My Lords, 160 are  
9 promotees. I have put that in a table, My Lords. And, My Lords, in the top 30 bracket, only 11  
10 managed to get throughout as against 160, which works out to 6.87% and direct recruits total  
11 strength is 37, out of which 12 managed to get through, which is 32.4%, and out of turn  
12 promotion 5 out of 5. So 100%. I'm told, that in the last 14 years, My Lord, there has been no  
13 out of turn promotion. The reason maybe as Your Lordships said My Lord they may be  
14 thinking that they will get the promotion faster...

15 **CHIEF JUSTICE B.R. GAVAI:** Normal stream.

16 **ATUL YESHWANT CHITALE:** Faster in the normal stream. That may be the reason but  
17 out of turn promotions have not been theirs. And if Your Lordships also sees Table 1, which is  
18 at para 6 in the earlier page. This is a projection today and in 2026 up to 2029. The projection  
19 shows that promotee judges will be 11, out of turn will be 5 and direct will be 14. So therefore,  
20 and by 2029 the promotee judges get reduced to 11, out of turn promotee judges gets reduced  
21 to 1 and direct recruits gets reduced to 22. My Lords I was showing that table My Lords. Even  
22 a future projection today 11 promotee judges, by 2029 it's reduced to 7 and out of turn  
23 promotees 5 gets reduced to 1 and direct recruits 14 has increased to 22 by 2029. This disparity  
24 has not been considered by the 2002 judgement and therefore, I'm asking Your Lordships to  
25 reconsider that para, para 29. Now My Lords if Your Lordships also sees the propositions that  
26 I have... suggestions that I have made. I have summarized them at page 7. I'm sorry, My Lords.  
27 PDF 117.

28 **JUSTICE VIKRAM NATH:** Yes. Solutions suggested by [UNCLEAR]?

29 **ATUL YESHWANT CHITALE:** That's right. Correct, My Lord.

1 **JUSTICE VIKRAM NATH:** Basically you are saying the same thing what the Amicus was  
2 saying?

3 **ATUL YESHWANT CHITALE:** Yes, and as far as the weightage is concerned, same  
4 submission as Mr. Giri. I'll skip my detailed submission; I'll just come to... Your Lordships sees  
5 para 37 benefits of the first model, which means three parallel streams. "Age related  
6 disadvantage stands automatically redress as neither stream can encroach upon the legitimate  
7 share of the other in any circumstances. It shall ensure that best of both streams occupy  
8 leadership roles, and each stream as a class receives fair and equitable representation in  
9 accordance with the intended policy. This model also overcomes all recruitment related  
10 challenges including administrative delays in filling up posts and ill effect of block... filling a  
11 multiple posts in a single year, thereby preventing any distortion in seniority or imbalance.  
12 Entrance of each stream will have absolute clarity and certainty regarding their future career  
13 prospects from the very inception. Model will be eliminating all litigation trends normally  
14 possible between two streams. Even randomness in the seniority process, where unintended  
15 benefit accrues is likely to be eradicated.

16 Now second model that is weightage. Another fairly workable model to overcome age  
17 imbalance challenge worth consideration could be the weightage formula of past service  
18 suggested by Shetty Commission. This Honourable Court may appreciate that this system is  
19 still in force and functioning effectively in IAS service successfully neutralizing any age related  
20 advantage. This hybrid model perfectly fits into Prayer C of Amicus with a possible solution as  
21 it also applies rota and quota rule, in addition to..."

22 **CHIEF JUSTICE B.R. GAVAI:** Yes, we'll go through it, Mr. Atul.

23 **ATUL YESHWANT CHITALE:** Very well, My Lord. Very well. There is just one other data  
24 which the Amicus himself had produced as far as **Punjab** is concerned, I'll just show those  
25 two pages. That's all, My Lords. In fact the Amicus had read it, My Lords. Page 15 of Volume  
26 1, para 23.

27 **JUSTICE VIKRAM NATH:** Page 15 of Volume 1?

28 **ATUL YESHWANT CHITALE:** 17. 17.

29 **JUSTICE VIKRAM NATH:** 1-7?

30 **ATUL YESHWANT CHITALE:** 1-7. Para 23, PDF 19.

- 1 **JUSTICE VIKRAM NATH:** Yes. Table is there.
- 2 **ATUL YESHWANT CHITALE:** Table is there. I'm just showing Item No. 9, Punjab.  
3 Average age at the time of appointment of District Judge is 40 and the time of appointment,  
4 Promotee Judge is 46. Difference is six years. So even the Amicus has highlighted...
- 5 **CHIEF JUSTICE B.R. GAVAI:** Learned Amicus has given the data of all the...
- 6 **ATUL YESHWANT CHITALE:** All the data has been given, and that includes data of  
7 *Punjab*. I'm obliged.
- 8 **CHIEF JUSTICE B.R. GAVAI:** Thank you. Yes, Mr. Talekar.
- 9 **SATISH TALEKAR:** The State Judges Association.
- 10 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 11 **SATISH TALEKAR:** This Association represents all the three classes of District Judges.
- 12 **CHIEF JUSTICE B.R. GAVAI:** All the three classes?
- 13 **SATISH TALEKAR:** We are taking balanced approach.
- 14 **JUSTICE VIKRAM NATH:** All the three classes of Judges?
- 15 **SATISH TALEKAR:** Yes, My Lords.
- 16 **CHIEF JUSTICE B.R. GAVAI:** Direct or...?
- 17 **SATISH TALEKAR:** We are taking a very balanced approach which would be in the best  
18 interest of administration of justice, which would go to eliminate disparities, remove  
19 discrimination.
- 20 **CHIEF JUSTICE B.R. GAVAI:** Is Mr. Ghumare still the President?
- 21 **SATISH TALEKAR:** No, it's Mr. Patil. Sachin Patil is the President. Recently there were  
22 elections, few years back. The stand of the association is obvious, discrimination can be  
23 removed.
- 24 **CHIEF JUSTICE B.R. GAVAI:** What are your suggestions? You are saying that you are  
25 most balanced approach. So what is the balanced approach?

- 1 **SATISH TALEKAR:** I'll first, My Lord, place on record certain data in tabular forms. My I,  
2 My Lords at Volume 3, page 55, Volume 3, page 55 to 88.
- 3 **JUSTICE VIKRAM NATH:** No. Your written submissions are in Volume 1 only.
- 4 **SATISH TALEKAR:** Yes, written submissions are there, but before that, I'll point out some  
5 official data.
- 6 **JUSTICE VIKRAM NATH:** *Achhaa.*
- 7 **SATISH TALEKAR:** To show that how this roster system does not work well. My Lords,  
8 kindly turn to page 89.
- 9 **CHIEF JUSTICE B.R. GAVAI:** Volume 3A?
- 10 **SATISH TALEKAR:** Yes. P-4, My Lords. Annexure P-4, page 83.
- 11 **CHIEF JUSTICE B.R. GAVAI:** IA number? Yes.
- 12 **SATISH TALEKAR:** IA number, My Lords...
- 13 **CHIEF JUSTICE B.R. GAVAI:** 248309.
- 14 **SATISH TALEKAR:** 248349.
- 15 **CHIEF JUSTICE B.R. GAVAI:** 8309.
- 16 **SATISH TALEKAR:** 49 *hai*. 248349. There are two IAs. One for intervention, one for...
- 17 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 18 **JUSTICE VIKRAM NATH:** 248349.
- 19 **SATISH TALEKAR:** My Lord, it is Annexure P-4.
- 20 **JUSTICE VIKRAM NATH:** Yes.
- 21 **SATISH TALEKAR:** My Lords, it's a list of 19 judges of Bombay High Court who were  
22 elevated after 2020.
- 23 **CHIEF JUSTICE B.R. GAVAI:** Page number?

- 1 **SATISH TALEKAR:** 89. 118.
- 2 **JUSTICE SURYA KANT:** 89, the IA starts, at 248309.
- 3 **SATISH TALEKAR:** I cited it My Lords at Annexure P-4.
- 4 **JUSTICE VIKRAM NATH:** Annexure P-4, page 83. PDF page...
- 5 **SATISH TALEKAR:** PDF 118.
- 6 **JUSTICE VIKRAM NATH:** Where is the list, Annexure P4?
- 7 **CHIEF JUSTICE B.R. GAVAI:** IA starts at Page 55 of the...
- 8 **JUSTICE VIKRAM NATH:** Running page 83, PDF page 89.
- 9 **SATISH TALEKAR:** Confusion would be I have filed two IA. I'm referring to, My Lords, IA  
10 248349.
- 11 **CHIEF JUSTICE B.R. GAVAI:** We have page 83.
- 12 **SATISH TALEKAR:** Yes, My Lord. It's titled as Annexure P4, List of...
- 13 **JUSTICE VIKRAM NATH:** High Court Judges.
- 14 **SATISH TALEKAR:** Yes, My Lord, which are elevated after 2020. My Lords, out of 19,  
15 judges serial number 1, 2 and 10, they are retired, My Lords.
- 16 **CHIEF JUSTICE B.R. GAVAI:** All three of them are retired now?
- 17 **SATISH TALEKAR:** Yes. And, thereafter, My Lords, during last five years, today, whatever  
18 16 judges we have from this category they all belong to, My Lords, direct District Judge's  
19 category. They are drawn from direct District Judge's category. And, then My Lords may kindly  
20 turn to next page, 1, 2 and 11, they are retired. So, these are 16, My Lords, who were drawn  
21 from direct District Judges. The next page is, My Lords, 3 which are again retired. They were  
22 drawn from Promotee District Judges cadre. My Lords, kindly turn to earlier Annexure P3,  
23 turn to page 83. Page 83.
- 24 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR] has also retired. Mr. Mehre has retired. Mr.  
25 [UNCLEAR] has retired.

1 **SATISH TALEKAR:** Yes. So today, there is no judge, My Lord, on the Bench who's drawn  
2 from, My Lords, Promotee District Judges Cadre.

3 **CHIEF JUSTICE B.R. GAVAI:** What is your suggestion? You say that you have some  
4 balanced approach.

5 **SATISH TALEKAR:** No, My Lords, kindly turn to page 83. I have taken it from official  
6 website of the High Court.

7 **CHIEF JUSTICE B.R. GAVAI:** We know that and at least... as so far as I'm concerned, I  
8 know what is actually positioned there. What I'm saying is you are appearing for all the three  
9 categories.

10 **SATISH TALEKAR:** I'm not taking partisan approach.

11 **CHIEF JUSTICE B.R. GAVAI:** What is your suggestion?

12 **SATISH TALEKAR:** My suggestion, I'll come to the suggestion. Before that, I just want to  
13 point out, My Lords, a list of all district judges which are there on 1st January 2025, first 25,  
14 they are all from direct district judges cadre.

15 **CHIEF JUSTICE B.R. GAVAI:** From the district judges cadre.

16 **SATISH TALEKAR:** So, tomorrow, if, My Lords, will start to fill, My Lords, not a single  
17 candidate from Promotee District Judges Cadre will be considered because, My Lord, the zone  
18 of consideration they consider one is to three. So today, there are My Lords, about nine  
19 vacancies, in district judges cadre who can be elevated. Now, even if those nine are to be filled  
20 in today, they are to be filled in from the zone of consideration. And first 27 candidates, they  
21 are all, My Lords, direct district judges. Kindly turn to page 83, I'll point out... 78, I'm sorry.

22 **CHIEF JUSTICE B.R. GAVAI:** 79... 78. First 25 are...

23 **SATISH TALEKAR:** All these 23 and even 24 and 25, they're all direct district judges. And  
24 then, My Lords, even on the next page... and by the time the earlier list is exhausted and the  
25 other candidates are come in the zone of consideration, all these, My Lords, promotee district  
26 judges, they'll retire by that time. And they'll be only, My Lord, direct district judges. So, My  
27 Lords, elevations herein after, even in future could be done only from direct district judges  
28 cadre. And this is how, this is working to disadvantage. And then, My Lords, page 82. Page 82.  
29 My Lords, out of 125, first 125, we have about 525 district judges in Maharashtra. I have taken  
30 only first 125, out of 125 My Lords 74 belong to direct district judges cadre and 51 would be

1 from promotee district judges cadre and even these 51 by the time their turn comes, they must  
2 have retired. So only direct district judges could be available for consideration or they would  
3 come in the zone of consideration. This is how it works to the disadvantage of the... Then, my  
4 written submissions are in Volume 1, page 120. I'll come to the suggestions, they are at page  
5 13. I'll first point out 2-3 charts. The first chart is at page 122. Volume 1, my written submission  
6 starts at page 120. PDF page is 122. I compiled the data and put it in a tabular form. In 2021,  
7 six judges were elevated from district judges cadre, all six...

8 **CHIEF JUSTICE B.R. GAVAI:** Page number?

9 **SATISH TALEKAR:** 122. It's a table.

10 **JUSTICE VIKRAM NATH:** The average age? The average age?

11 **SATISH TALEKAR:** No, it's not average age, this is about elevation of High Court judges. It  
12 is a coloured table.

13 **JUSTICE VIKRAM NATH:** Coloured chart. Yes.

14 **SATISH TALEKAR:** In 2021 six judges were elevated and they all belong to direct district  
15 judges cadre. Then My Lords in 2022, My Lords two on the first page...

16 **CHIEF JUSTICE B.R. GAVAI:** Mr. Talekar, we understand the position. You already  
17 pointed all this in 83 of the IA. You said that you are applying for all the three categories. So,  
18 what is your solution?

19 **SATISH TALEKAR:** Solution is, if we have to improve the efficiency of judicial  
20 administration, solution would be, we will have to give adequate representation to the  
21 promotee district judges. So my suggestions are My Lords, kindly turn to My Lords page 13.

22 **JUSTICE VIKRAM NATH:** The way forward, yes.

23 **SATISH TALEKAR:** PDF 132.

24 **JUSTICE VIKRAM NATH:** The way forward?

25 **SATISH TALEKAR:** Before the way forward, there is need to review All India Judges case,  
26 2002. I'll read just one paragraph. "The Honourable Court in All India Judges Association had  
27 prescribed the roster system, hoping against hope that the problem faced by the district judges  
28 would stand elevated. However, since the roster system has been ineffective in addressing the

1 problems of disparity between the promotions and direct recruits, it would be necessary to  
2 review the procedure of fixing *inter se* seniority and quotas for further promotion if necessary  
3 by reviewing the judgement, in the case of **All India Judges Association- third**, the light  
4 of directions contained in **1993 4 SCC, All India Judges Association- two** there was a  
5 direction that there has to be periodical review of service conditions of district judges. Now  
6 this was done in 1999 and that was considered in 2002. Some of the... most of the  
7 recommendations were accepted, approved. Some recommendations were disapproved.  
8 Thereafter, no periodical review has been done, perhaps, because this court had put a seal by  
9 accepting some of the recommendation, by rejecting some of the recommendations. So My  
10 Lords commission did not go in for reconsideration or review of My Lord service conditions  
11 after 2002, and this is para 11 of **All India Judges** that judgment, para 11 My Lords there is  
12 a direction, that there has to be periodical review of service conditions by the commission.

13 Then I will read suggestions. The way forward proposed reforms. The above backdrop, My  
14 Lords I have considered everything earlier and with a view to addressing the long-standing  
15 imbalance between promotee and direct district judges, the following reforms are proposed  
16 for consideration of this Honourable Court.

17 One, introduction of weightage system for promotee District Judges while fixing their seniority  
18 *vis-a-vis* direct recruits. My Lord, the Commission, Justice Shetty Commission had devoted  
19 about 11 pages, so as to introduce weightage system. Before recommendations were made,  
20 discussion goes on for 11 pages and then there are recommendations. And those  
21 recommendations are ultimately brushed aside, just in one line, para 30 of **All India Judges**  
22 case. I'll read My Lords that and that is not approved only because they said the judgement of  
23 Supreme Court in My Lord **Sabharwal** will take care of every case and the judgement of  
24 **Sabharwal** that was designed or that was intended to give effect to reservation policy. That  
25 was not My Lord to get over the seniority or promotions. And this Honourable Court has  
26 expressed doubt as to whether My Lords this roster system introduced in **Sabharwal** can be  
27 applied in case of seniority. And that is in **Ajit Singh** too 1999. So, My Lords, the time has  
28 come to reconsider the earlier directions. I'll read only three paragraphs. Of course this has  
29 been read by my... 1990. I'll read My Lord's **Sabharwal's** judgement. It's My Lords 1995 too.  
30 I'll first, My Lords read para 30.

31 **CHIEF JUSTICE B.R. GAVAI:** Mr. Dwivedi has already read those paragraphs.

32 **SATISH TALEKAR:** Yes, My Lords.

33 **CHIEF JUSTICE B.R. GAVAI:** You can just address your submission.

1 **SATISH TALEKAR:** Few more things I'll point out. Commissions, they are also at page 23  
2 and 24 by weightage system would be...

3 **CHIEF JUSTICE B.R. GAVAI:** Yes. We have understood you are saying that it is also  
4 applicable to IS, IPS.

5 **SATISH TALEKAR:** My Lords, those rules were considered by the commission. And, My  
6 Lord, there are judgements of this court where My Lords this weightage system had not only  
7 applied, but that had worked well very successfully and therefore, My Lord's commission had  
8 recommended to apply. Kindly turn to My Lords page 23, 142, My Lords. PDF 142. It's at  
9 paragraph 10. "While adopting the weightage system, certain practical concerns must be  
10 addressed to ensure that the mechanism achieves its intended purpose without giving rise to  
11 any anomalies of disputes. First, the Honourable Shetty Pay Commission had suggested  
12 granting one year of weightage for every five years of judicial service rendered before  
13 promotion, subject to a maximum of three years. However, in view of the significantly delayed  
14 promotions in most states and the steep disparity in the average age of entry, it would be  
15 appropriate to grant one year of weightage for every three years of service subject to maximum  
16 ceiling of five years. This would more meaningfully recognise the long and valuable judicial  
17 experience of promotee officers while maintaining parity with direct recruits and bringing  
18 about harmony, justice and complete fusion of District Judges received from two different  
19 sources. Second, it's possible that a junior officer may receive accelerated promotion through  
20 Limited Competitive Examination, 25% quota, strictly on the basis of merit. Such officers  
21 should not be unfairly placed below their seniors in the final seniority list, solely because they  
22 have fewer years of prior service. The object of the weightage system is to restore fairness, not  
23 to penalise merit or efficiency. Third, situation may arise where a comparatively junior officer  
24 receives promotion earlier than a senior due merit and performance as a criterion for regular  
25 promotion is merit cum seniority and not seniority cum merit. In such a case, the senior  
26 officer, though promoted later should not automatically be placed above the junior in  
27 seniority, merely because he has rendered a greater number of years in the lower cadre. To  
28 address this complexities and maintain uniformity across states, it would be desirable either  
29 to, one, incorporate specific safeguards in service rules, clarify how much contingencies would  
30 be addressed. B), as a similar and more relief form measure, grant a fixed five-years weightage  
31 to all promotee District Judges irrespective of their total years of prior service for the mode of  
32 their promotion." My Lords when discretion was given by Your Lordships in **All India**  
33 **Judges- third** that High Court shall My Lords make the rule. My Lords, while making the  
34 rules, certain instructions, certain principles which are there in the... in **Sabharwal's** case,  
35 they have not been, My Lords, followed by many High Courts. As a result, My Lords, the rules

1 framed, they are not only different from each other, but My Lord, there is no consistency and  
2 they are operating to disadvantage of several promotee district judges. That is all. Obligated.

3 **CHIEF JUSTICE B.R. GAVAI:** Yes, Ms. Raghuvanshi.

4 **COUNSEL:** The direct district judges of Maharashtra have a slightly different viewpoint.

5 **MAYURI RAGHUVANSHI:** May it please, My Lords. My Lords, I appear for the All India  
6 Judges Association in the matter and my submissions... I have four submissions. First and  
7 foremost, My Lords, I'm requesting that My Lords may review the judgment and to an extent  
8 that provide weightage to these judicial law... to the promotee officers on the basis of length of  
9 service accepting the recommendation.

10 **CHIEF JUSTICE B.R. GAVAI:** Of Shetty Commission?

11 **MAYURI RAGHUVANSHI:** Of Shetty Commission. And my reasons are twofold. First, post  
12 My Lords, the requirement of the practice, the age would... the age disparity would increase  
13 further. Secondly, when the Shetty Commission made that recommendation, it was to  
14 overcome the age disparity. However, the 2002 judgement fell into an error when it says that  
15 roster would remedy that problem. Now, that was roster would really not do that. Lastly, My  
16 Lords, pursuant to **Rajnesh's** order, this one, of course, the weightage is not alien to service  
17 jurisprudence. It's there with the IAs also. And secondly, post **Rajnesh**, My Lords, this really  
18 is justified because on the basis of length of service, such a weightage would be reasonable. So,  
19 it would be in line with My Lord's earlier order, which, of course, that benefit was not there in  
20 2002, but that is now here today. So, therefore, I'm requesting My Lords to review that to this  
21 extent, one.

22 Second, My Lords, the roster system has failed. It has failed for three reasons. One, My Lords,  
23 it does not remedy the age gap. Secondly, because of the roster system, what happens is that  
24 the direct recruits get clubbed at the top. So, there is... they may, in the... at the entry level, it  
25 may so appear that there is a division that there is 50% promotee officers, 25% direct recruit  
26 and 25% accelerated promotee officers. But in the end, when they come at the higher bracket,  
27 it gets clubbed together as direct recruits are the one who remain standing because they have  
28 an age benefit. Now, My Lords, my request is that this roster system may kindly be done away  
29 with because it presumes that all three different modes of appointment can happen  
30 simultaneously.

31 Now, they are all elaborate processes, whether it is for the 25% accelerated promotion or direct  
32 recruit or the promotion by regular promotion by way of 50%. Now, it may be difficult for a

1 High Court to do all these things simultaneously. But in the end, so what happens is the  
2 promotee officer is available, he's working. In some places, like UP, there is a rule which says  
3 that you can make him... you can appoint him against a vacancy by way of a short gap. But that  
4 appointment will not be carried towards his length of service, which means that he is virtually  
5 discharging his function as an Additional District Judge. He's doing all the judicial duties of  
6 an Additional District Judge, but for the purposes of his seniority, he's a phantom. He doesn't  
7 exist because his seniority will only be counted once he is appointed, his appointment is made  
8 under Rule 22(1). Now, when that 22(1) will happen when the roster would be applied.

9 So he is there, he is working, but he is waiting for all the administrative things to function  
10 while he is working, but he is phantom for that particular period. So, My Lords, for any reason,  
11 it could be because there is an administrative exigency, it could be because there has been an  
12 incorrect determination of vacancy and High Court is continuing that exercise, it could be for  
13 number of reasons. But if we wait... if the officer has to wait for his turn to put in the roster  
14 when all three modes of appointments can happen simultaneously, it leads to a delay. So, that's  
15 one reason, My Lords.

16 Secondly, My Lords, post **Rajnes** judgement where My Lords have said that an experience,  
17 a judicial experience is more than that of experience as an advocate. Then, in a roster system  
18 where a person who has already worked as a judge in the judicial services is put below a person  
19 who makes an entry at the direct level, that would be contrary to this, because if seniority has  
20 to be looked at, he has... as a judge, he definitely has more experience. The direct recruits, on  
21 the other hand, have an advantage of age. The accelerated officers have an advantage of age  
22 plus also experience, whereas these promotee officers have an advantage of experience. Now  
23 all these three sources can be merged together and equalised, if instead of applying a roster,  
24 one, weightage is given to them, and two, if their seniority is reckoned for the promotee officers  
25 from the date of availability of the vacancy for them and their suitability.

26 **CHIEF JUSTICE B.R. GAVAI:** Availability of vacancy, then again it goes back to the roster  
27 system then.

28 **MAYURI RAGHUVANSHI:** No, My Lords. No, My Lords. It would not because if we look  
29 at the earlier principle for example, in **B. L. Goyal or O. P. Garg**, which had been followed  
30 and that has been noted down in the first national judicial Shetty commission report also.  
31 What they say is that so far as the direct recruits are concerned, they cannot claim seniority  
32 from any date anterior to their appointment. But in case of a promotee officer, he's there; he  
33 is in the service; this vacancy is also there. He's also found suitable, so which means his  
34 promotability is not in question, the availability of vacancy is not in question; then why should

1 his seniority be delayed for no fault of his own? Therefore there are line of judgements My  
2 Lord for example, **O.P. Garg** is actually quoted in Shetty Commission where they've said that  
3 so far as the promotee officers are concerned, the criteria has to be promotability and whether  
4 there is a vacancy available for you or not. So, if these two things are available then, simply  
5 because there have been an administrative delay for any x, y, z reason. The seniority of that  
6 officer must not get suffered. So because today My Lords, a number of these promotee officers  
7 are losing on the seniority, it's because the promotions are not being made. This problem is  
8 more in states which have a larger number of officers. So because the more the officers, the  
9 more difficult it would be for the High Court to realign and compute the vacancies. Lastly, My  
10 Lords, how they make an entry into the system? So, if the promotion from the civil judge cadre  
11 to the ADJ cadre is smooth, the problem today, My Lords is this, that in 2002, when My Lords  
12 said that now there will be three modes of recruitment. One, by promotion, one by way of  
13 accelerated promotion, and one by way of direct recruitment. Even for the purposes...  
14 Paragraph 29 of the 2002 uses the term merit cum seniority. Now in **Gujarat judgement**  
15 by My Lords. My Lords have held that that is not a strait jacket formula, but there My Lords  
16 have taken clue from the **Malik Mazhar** judgement. Now **Malik Mazhar** very clearly says  
17 that even the 2002, so far as that 65% promotion quota is concerned, you are going to not deny  
18 a promotion to a civil judge until he is found unsuitable. So, it's rather the other way around.  
19 If a person is unsuitable, then you don't promote him. But what happens in practice is this,  
20 that the word used in most of the rules that are placed on record and because learned Amicus  
21 has actually created a table, summary of the rules in the first page of the volume. I'm not  
22 referring... going there. In all of them, they use the word "merit cum seniority." And this is  
23 because the 2002 judgement says so. And the method of promotion under this 50% quota is  
24 not very clear. So, for example, whether there would be a written suitability test or not, how  
25 do you actually assess the suitability of an officer? For example if suppose an officer has an  
26 integrity issue, then he's unsuitable, he's found unsuitable by the High Court for promotion,  
27 then with passage of time, let's say in the next recruitment year, he may not become suitable  
28 because this unsuitability is of a nature that can't be overcome. But let's say suppose in a batch  
29 of 100 civil judges, they pick up that these 20 are most suitable and ought to be promoted,  
30 then those 80 who are superseded would those 80 be then considered again in the next round?  
31 If that is the case, then it means that in the Additional District Judge cadre, while a junior may  
32 become senior even under that 50% quota, so, it's not happened in a sequence, in a smooth  
33 sequence. The promotion, the civil judge who was senior in the civil judge cadre when that  
34 officer will go in the edges, under the 50% quota may also lose his seniority and may become  
35 junior to somebody to the promotion cadre. Now, the rules are absolutely silent there. 2002  
36 judgement only says that you have to consider merit if an officer is sound suitable, then apply  
37 the principle of merit cum seniority. And all High Courts have framed their rules in that

1 fashion. But how that would actually be put into practice? The rules are silent there. Now, My  
2 Lords, if I may just point out in the R. D. Maheta's, **Ravi Dhansukhlal Maheta's** case, the  
3 decision of My Lords in **Malik Mazhar** was quoted and if I may just request My Lords to  
4 have Volume 5A, PDF 1060 and the printed page is 1056. I'm just quoting the relevant  
5 paragraph, My Lords, paragraph 139. This is where **Malik Mazhar** is quoted, printed is 1057.

6 **JUSTICE VIKRAM NATH:** Paragraph 139?

7 **MAYURI RAGHUVANSHI:** 139, My Lord. So, 139 quotes **Malik Mazhar** and he says,  
8 what My Lords had held in **Malik Mazhar** is this, that until and unless an officer is found  
9 unsuitable, please do not deny that officer a promotion. Now looking at this, and My Lords  
10 had actually looked at all the rules in the other states also and said what we hold is that one  
11 must have an objective assessment of suitability. But in practice, because the rules are silent,  
12 there are no guidelines from My Lords there. It says, the assessment becomes subjective. For  
13 example, in several of the cases, like in **Gujarat**, it has happened that a bunch of officers who  
14 had been found suitable, they had cleared the suitability test, but because they were lower  
15 down in the list, they were not promoted because there were limited vacancies. Now, in the  
16 next recruitment year, the expectation would be naturally that, okay, I was found suitable; so,  
17 my turn did not come last time, now my turn has come. Now, I'm relatively senior. Now, with  
18 this vacancy, I'll be promoted. But this time he is held unsuitable. As a matter of fact, some  
19 officers who were the top scorers have been found unsuitable this year. So, now the question  
20 is, I was suitable then but there was no vacancy. Now, with time, now this time I'm not suitable.  
21 So, the assessment of suitability is also subjective. Whereas My Lords have directed the High  
22 Courts to frame rules and have an objective assessment. So, therefore, My Lords, if the  
23 assessment, the suitability assessment is objective, if a method is ensured that the Civil Judges  
24 under the 50% quota are promoted until and unless they are not found unsuitable and with  
25 passage of time, because they are not competing *inter se*, they are not making an accelerated  
26 jump like the 25% competitive exam, so there, this heartburning would be really mitigated to  
27 a large extent. Secondly, this will not really have an adverse effect on the direct recruits also,  
28 because direct recruits have an advantage of the age. So, they have actually hopped into the  
29 cadre. So, even if the roster is not applied to them, they are accorded seniority from the date  
30 on which they are born in the cadre. That is the date of their substantive appointment. Even  
31 then, they will have the benefit of being young in age. The age would work to their advantage.  
32 The same advantage would work for the Limited Competitive Departmental Exam also  
33 because they get into the cadre much earlier than their counterparts who were there in the  
34 Civil Judge cadre. So, even if the roster is not applied and he is not put at Serial Number 5  
35 there, even then he will have the advantage because he will still be the youngest in the cadre.  
36 He'll still be the youngest. So, My Lords, with this, of course, we are an alternative, the **All**

1 **India Judges** is supporting the prayer of the learned Amicus for the quota. That is what we  
2 are, but primarily we are requesting...

3 **CHIEF JUSTICE B.R. GAVAI:** You are on weightage?

4 **MAYURI RAGHUVANSHI:** Yes, primarily, My Lords, one on weightage and secondly, the  
5 roster has to go. And third, the suitability has to come with an object. My Lords may kindly  
6 laid down guidelines so that the suitability test which is done for promotion from Civil Judge  
7 to the ADJ. That becomes objective and that doesn't remain objective because...

8 **CHIEF JUSTICE B.R. GAVAI:** That we have already issued directions in the *All India*  
9 *Judges*.

10 **MAYURI RAGHUVANSHI:** My Lords, what is happening is that in practice, there are still  
11 some gap. For example...

12 **CHIEF JUSTICE B.R. GAVAI:** The judgement which I delivered in the way, Mr. Bhatnagar.

13 **MAYURI RAGHUVANSHI:** Yes.

14 **CHIEF JUSTICE B.R. GAVAI:** So as suitability test is concerned, we have issued certain  
15 directions in that judgment.

16 **SIDDHARTH BHATNAGAR:** Yes, My Lord. So, suitability test for...

17 **CHIEF JUSTICE B.R. GAVAI:** For promotion from the civil judge senior division to the  
18 district judge.

19 **SIDDHARTH BHATNAGAR:** Yes. So correct, My Lord, because earlier what the 2002  
20 judgment had used the words merit cum seniority. So, Your Lordships took the view there  
21 can't be merit at two stages. Merit for LDCE also and merit for the civil judge senior division  
22 to ADJ also. So, therefore, Your Lordship said suitability.

23 **CHIEF JUSTICE B.R. GAVAI:** We issued certain directions as to what should be the  
24 suitability test.

25 **MAYURI RAGHUVANSHI:** Yes, My Lords.

26 **SIDDHARTH BHATNAGAR:** Because some High Courts were not having the suitability  
27 test, they were doing it on basis of ACR itself.

1 **MAYURI RAGHUVANSHI:** My Lords, additionally, the only thing I'm requesting is, in  
2 addition to those guidelines is this, suppose an officer is found suitable, he qualifies the  
3 suitability test in, let's say, the current recruitment year. But he is not promoted because he is  
4 lower down in the seniority list.

5 **JUSTICE VIKRAM NATH:** And there are no vacancies for... correct.

6 **MAYURI RAGHUVANSHI:** So does he has to give that suitability test again?

7 **JUSTICE VIKRAM NATH:** Why not? If he has spoiled his career in that one year, he can  
8 be stopped again. He's being tested at a time when he's being promoted.

9 **CHIEF JUSTICE B.R. GAVAI:** Considered.

10 **JUSTICE VIKRAM NATH:** Considered.

11 **MAYURI RAGHUVANSHI:** That's exactly what my point is. So, if he has done something  
12 that...

13 **JUSTICE VIKRAM NATH:** You can't say that once you have qualified, then you are  
14 qualified for all times, whenever vacancy comes you should be promoted.

15 **MAYURI RAGHUVANSHI:** I leave it to you.

16 **JUSTICE VIKRAM NATH:** Your work should also be considered.

17 **MAYURI RAGHUVANSHI:** Yes, I leave it there. I'm most grateful, My Lord.

18 **CHIEF JUSTICE B.R. GAVAI:** Thank you for your... On both the sides on oral process you  
19 have done voluminous work.

20 **MAYURI RAGHUVANSHI:** Grateful, My Lord. I'm very grateful.

21 **CHIEF JUSTICE B.R. GAVAI:** Yes, Dr. Vivek Sharma.

22 **DR. VIVEK SHARMA:** Your Lordship, I will start my proposition. By the virtue of Article  
23 233, Clause 1, and Article 235, the issue of promotions of the district judges is exclusively in  
24 the domain of the High Courts. So this Honourable Court should only decide the guiding basic  
25 principles for the promotion of the district judges and the concerned High Court should be at  
26 the liberty in formulating detailed rules and regulations for the promotion of the district  
27 judges.

1 Now, Lordship, here are mainly the two issues. First is framed by the Honourable Court what  
2 should be the criteria for determining seniority in the cadre of the higher judicial services. And  
3 the second issue is in the prayer of the Amicus, that the promotee judges should get the extra  
4 advantage to... you can say for the appointment of the post of the principal district judges. So,  
5 Lordship, I will, starting my submission from the prayer of the Amicus first. And after that the  
6 issue framed by the Honourable Court on the second.

7 I am supporting the prayer of the Amicus that the promotee judges should get some extra  
8 advantage in the appointment for the post of Principal District Judges. But the way and the  
9 manner and to the extent, how can it be done and to what extent it can be done, it is totally  
10 different in my submission. First, it is my duty to bring to the notice of the Honourable Court  
11 that what are the concerned laws and constitutional provisions relating to reach at that issue  
12 or the solution of that particular problem to get the... you can say, for the post of Principal  
13 District Judges the opportunity to the promotee judges. In ***Roshan Lal Tandon vs. Union***  
14 ***of India*** in 1967, which is against all of us, we know.

15 **CHIEF JUSTICE B.R. GAVAI:** Against all of us?

16 **DR. VIVEK SHARMA:** No, you can say of our side, Lordship. And my proposition is that  
17 the second issue that the proposition that for the post of Principal District Judges, the  
18 promotee judges should be considered and the extra advantage must be given to the higher  
19 strength of Bench. Why? Let me complete it. I am speaking on this end, and I know this.  
20 Because in ***State of Punjab vs. Davinder Singh***, in morning the Amicus is saying that is  
21 superseding the ***Roshan Lal Tandon vs. Union of India***. It is not because I also argued  
22 in that.

23 **CHIEF JUSTICE B.R. GAVAI:** That you have argued in every Constitution Bench.

24 **DR. VIVEK SHARMA:** No, Your Lordship in that particular bench. So, that's why I am...

25 **JUSTICE VIKRAM NATH:** You have surpassed Mr. Tushar Mehta also in arguing in  
26 Constitution Benches.

27 **DR. VIVEK SHARMA:** No, Lordship. Just I'm saying two or three points which are  
28 favourable to us.

29 **JUSTICE VIKRAM NATH:** Gopal Sankaranarayanan. Today he is not here?

30 **DR. VIVEK SHARMA:** I'm grateful Lordship.

- 1 **CHIEF JUSTICE B.R. GAVAI:** He was here.
- 2 **DR. VIVEK SHARMA:** Yeah, Lordship. In the *State of Punjab vs. Davinder Singh* we  
3 are discussing the sub-quota in quota. And that was only given by the state only after the  
4 empirical data and that was for the familiar purpose in the SC/ST category.
- 5 **JUSTICE VIKRAM NATH:** In one line why don't you tell us how we... prepared. Give your  
6 submission and tell us.
- 7 **DR. VIVEK SHARMA:** I am coming on that point.
- 8 **CHIEF JUSTICE B.R. GAVAI:** We have only 2 minutes.
- 9 **DR. VIVEK SHARMA:** Yeah. Within five minutes, I will...
- 10 **CHIEF JUSTICE B.R. GAVAI:** Two minutes you have. You were granted ten minutes as  
11 per your chance.
- 12 **DR. VIVEK SHARMA:** Your Lordship I asked for the 30 minutes, but the time is reduced...
- 13 **CHIEF JUSTICE B.R. GAVAI:** 7 minutes are over. Yes.
- 14 **JUSTICE VIKRAM NATH:** For that you complain to the Amicus or the Nodal Counsel.
- 15 **DR. VIVEK SHARMA:** So, this provision that how much quota should be given to the  
16 promotee judges must be considered by the bench of the higher strength because the *State of*  
17 *Punjab vs Davinder Singh...*
- 18 **CHIEF JUSTICE B.R. GAVAI:** Should have been on this side.
- 19 **DR. VIVEK SHARMA:** No, no. Lordship they are different things. They are saying that the  
20 promotee judges should not get any extra benefit, but I am said they should get. But...
- 21 **CHIEF JUSTICE B.R. GAVAI:** Refer to seven judges.
- 22 **DR. VIVEK SHARMA:** Yeah, that is the difference in both. And Lordship also one more  
23 thing. If we compile the total LCDE and total promotee judges in the one cadre and the direct  
24 recruits in the second cadre and one ratio three, the 25% from the promotee judges, whether  
25 it is from the timescale or the selection grade or from the LCDE and the 75% from the direct  
26 recruits. That is my proposition.

- 1 **CHIEF JUSTICE B.R. GAVAI:** Yes, thank you.
- 2 **DR. VIVEK SHARMA:** Grateful to My Lords.
- 3 **SIDDHARTH BHATNAGAR:** Sorry My Lords. Apropos the question of My Lord the Chief  
4 Justice.
- 5 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 6 **SIDDHARTH BHATNAGAR:** On the suitability test My Lord, the Chief Justices' question,  
7 that is decided as issue 6 in that 20...
- 8 **CHIEF JUSTICE B.R. GAVAI:** In that matter. So that...
- 9 **SIDDHARTH BHATNAGAR:** Page 891.
- 10 **CHIEF JUSTICE B.R. GAVAI:** We also laid down certain...
- 11 **SIDDHARTH BHATNAGAR:** Absolutely.
- 12 **CHIEF JUSTICE B.R. GAVAI:** We are also referred to that *Gujarat judgment*.
- 13 **SIDDHARTH BHATNAGAR:** Page 891. Volume 5.
- 14 **CHIEF JUSTICE B.R. GAVAI:** We have also laid down certain guidelines as to what should  
15 form the suitability.
- 16 **SIDDHARTH BHATNAGAR:** What should form the suitability. Absolutely.
- 17 **DR. VIVEK SHARMA:** Merit cum seniority must be considered in that.
- 18 **CHIEF JUSTICE B.R. GAVAI:** Tomorrow we'll be sitting in the first half because I have  
19 some difficulty in the second half. So, we'll give some more time on...
- 20 **JUSTICE VIKRAM NATH:** If required.
- 21 **CHIEF JUSTICE B.R. GAVAI:** There are so many on the other side.
- 22 **JUSTICE VIKRAM NATH:** Still they all collapsed, their defence. They will all be saying the  
23 same thing
- 24 **CHIEF JUSTICE B.R. GAVAI:** Mr. Rao is also there.

1 **JUSTICE VIKRAM NATH:** Just because there are nine Counsels doesn't mean that you will  
2 all repeat the same thing again.

3 **CHIEF JUSTICE B.R. GAVAI:** You are from Punjab or Haryana, Mr. Rao? Kerala?

4 **JUSTICE VIKRAM NATH:** Kerala has benefited as he has practiced from Kerala. The other  
5 day in High Court also he was appearing for Kerala.

6 **CHIEF JUSTICE B.R. GAVAI:** So Mr. Basant will have some competitor. We will continue  
7 on Tuesday.

8 **JUSTICE SURYA KANT:** Thank God he doesn't say north to south.

9 **DR. VIVEK SHARMA:** Grateful.

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<<<<END OF DAY'S PROCEEDINGS>>>

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