

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

3 **GOPAL SANKARANARAYANAN:** My Lords, before my friend starts, there's a slight tweak
4 in the sequence. Mr. Jaideep Gupta and Mr. Bhushan will be going immediately after Mr.
5 Patwalia.

6 **P. S. PATWALIA:** So, My Lord, I have been given 15 minutes. I will stay within that time.
7 My Lord, I have...

8 **CHIEF JUSTICE B.R. GAVAI:** You've got an hour more. Otherwise... If you would have
9 concluded the other day, you would have got only two hours. You are getting two and a half
10 hours more.

11 **P. S. PATWALIA:** Correct, correct. So, My Lord, just to facilitate and save time, I have put
12 in writing what I had argued on that day. It is just five pages. I have given it to Your Lordships,
13 My Lord. If Your Lordship will see page 1 of what I have handed over, My Lord, the written
14 submission. Page 1, I need not read or repeat. I had already told Your Lordships that **Delhi**,
15 the Promotees...

16 **CHIEF JUSTICE B.R. GAVAI:** The situation is reversed, right?

17 **P. S. PATWALIA:** Yes. Is reversed. I have recapitulated that in page 1, My Lord. I need not
18 read it. Your Lordship would see it. That is the position in Delhi. Now on weightage, the
19 argument of weightage for the Promotees which was made, also I had submitted My Lord, and
20 that is the second point at page 2 that three avenues of accelerated promotion have already
21 been now opened for them, and I have at page 2, given as (a), is the first avenue that 25% quota
22 in District Judges by way of LCDE and the extract is of Your Lordships' 2025 **AIJA** judgement
23 where Your Lordships have recognized this, "that purpose was behind providing a special
24 quota is to enable meritorious Judicial Officers to get accelerated promotion." Then at point
25 (b), I have said that this Your Lordships have also now opened from junior to senior level. This
26 is the second accelerated advantage. And at (c), third, Your Lordships have now also made
27 them eligible to compete for direct recruitment. This is the third. And therefore, My Lord, the
28 submission is that no further weightage, perhaps Your Lordship may consider granting. And
29 weightage, I have said at (d) has been disapproved in the 2002 judgement. That para I have
30 quoted.

1 Now, what I wish to spend some 10 minutes is on my point no. 2, roster for maintaining
2 seniority because in my submission that may be an acceptable proposition. The doubt which
3 Your Lordship expressed that because direct recruitment can get late, people join later, and
4 then they can't get those earlier slots, I have tried to make some suggestion for Your Lordships'
5 consideration. Can I just take Your Lordship through these four, five points, this one page, My
6 Lord?

7 Now, roster for maintaining seniority. "It is submitted that the contention that the roster
8 system introduced pursuant to the 2002 judgement has failed is incorrect, as the roster system
9 has never been given a fair chance to operate due to lack of year-wise recruitment across all
10 streams, which is an essential requirement for its full and effective implementation. The 2002
11 judgement in paras 29-30 laid down the roster as a post-based system designed to secure
12 fairness, transparency, parity between Promotees, LDCE and direct recruits. When
13 recruitment is done regularly and on time, the roster system helps all three streams to move
14 forward with a proportionate representation in every block of four vacancies and also prevents
15 disputes of seniority." So, if properly implemented, it is 2, 1, 1. So in every block of four, we
16 will have all three categories. Now, **Malik Mazhar** becomes important because Your
17 Lordships have laid down a yearly schedule. Your Lordships have said, "calculate vacancies,
18 advertise by March, complete the process. By September, have the select list ready and by
19 October 31st, all three streams should be appointed." That is the schedule which Your
20 Lordships have laid down in **Malik Mazhar**. **Malik Mazhar** is also on Your Lordship's
21 Compilation. If Your Lordship... it is in Volume 5A, and page number is 483. If Your Lordship
22 wants to note, I'm not going to read it. That schedule is there. It was read earlier.

23 Then if Your Lordship will come to point 3(i), "The Applicant submit that vacancies for each
24 stream, i.e. promotion, LDCE and direct recruitment should be calculated with reference to
25 the total sanction strength of the cadre to ensure proportionate representation and continuity.
26 Once appointments from all three streams are made, for a given recruitment year, seniority
27 must be assigned strictly in accordance with the order of slots under the roster on a yearly
28 basis. The approach implemented on a yearly basis would balance *inter se* seniority and
29 maintain the 50:25:25 ratio in a block of four vacancies." This is judicially accepted My Lord.
30 That judgement I have reproduced at serial no. 6 of the same point in that **State of Punjab's**
31 case. Where I have extracted that para, where in fact the court said, because it's a yearly
32 recruitment, operate the roster. Now My Lord, the other two points are the doubts. What
33 happens when one process gets delayed? And then comes the heartburning because that man
34 is coming a year or two later and then wants to get that earlier slot. I've tried to say something
35 about it for Your Lordship's consideration.

1 Now I'll read 4 and 5. "Experience across state shows that promotion under the 50% Promotee
2 quota are generally made promptly while LDCE and direct recruitment appointees are often
3 delayed due to litigation or administrative delays. In such cases this court has consistently
4 held, appointment should relate back to the year of vacancy."

5 Now, next. "If each recruitment process is completed within the recruitment year and all
6 streams join, then there would be no cause for any heartburn by operation of the roster. This
7 court can mandate that process to be completed within the year or at any rate, within the next
8 year, before that year's select list is finalised, to minimize the cause of heartburn."

9 If I can pause here, this is important. If you are completing the process as per **Malik Mazhar**,
10 and by 31st October all three streams are joining, then they will be fitted into the roster. No
11 problem. My submission is My Lord, perhaps Your Lordship may consider mandating,
12 because the next year's select list at the earliest will be available only by October of that year.
13 That is the mandate... by September of that year; that is the mandate of **Malik Mazhar**. If
14 Your Lordships can provide a safeguard that even if there is delay, it should not go beyond the
15 next year, then also My Lord, there will be no heartburn. However, if there is more delay My
16 Lord, then what is stated subsequently is, then to maintain the seniority and maintain parity,
17 they must get the earlier slot. That is what I have submitted My Lord. And that is... There is no
18 escape from that if we are to go by the roster then. Because then that is the only way you will
19 be able to give a proportionate representation to everybody.

20 So, if I can just read this VA, My Lord. "In case recruitment process is completed within the
21 recruitment year and all streams join, then there would be no cause for any heartburn by
22 operation of the roster. This court can mandate the process to be completed within the year or
23 at any rate within the next year, before that year select list is finalised to minimize any cause
24 for heartburn. However, if due to certain circumstances, there is a delay in recruitment, and
25 the direct recruits of a particular recruitment year are not able to join within the recruitment
26 year during which the vacancies had arisen, then the date of appointment joining should not
27 be a relevant factor for determining seniority of direct recruits. It would suffice if action has
28 been initiated for direct recruit vacancies within the recruitment years in which the vacancies
29 had become available. This is so because delay in administrative action could not deprive an
30 individual of his due seniority. Any such initiation of action for recruitment within the year
31 would be sufficient to assign seniority to the direct recruit in terms of rotation of quota
32 principle, so as to arrange them within the Promotees' vacancies. If the process of recruitment
33 has been initiated during the year itself, then even if the selected candidates are appointed or
34 joined in subsequent year, the selected candidates would be entitled to seniority."

1 Now, this judgement I have quoted, but I must point out immediately here, in this judgement,
2 the fact was that all three streams joined in the same year, 2007. And therefore, what this court
3 says, para 67. The court has, however, taken the view that date of joining is not relevant. Para
4 67. "Officers belonging to different streams have to be confident that they will be recruited
5 under their quota and get seniority as per quota and roster. In the event seniority is to be fixed
6 with date of joining a particular stream, it would lead to uncertainty and making seniority
7 dependent on administrative authorities, which is neither in the interest of service, nor serves
8 the cause of justice. We thus conclude that roster is fully applicable for determination of
9 seniority. Officers of different streams selected in a particular year, even though they were
10 allowed to join the post on different dates, shall not affect their *inter se* seniority which is to
11 be decided on the basis of roster."

12 So, this is what the court has mandated. Otherwise, My Lord, I should not finish this point
13 without stating this Punjab and Haryana High Court relies on ***Parmar's*** case. Now,
14 ***Parmar's*** case in ***Meghachandra*** was said to be not good law by three Honourable Judges.
15 Subsequently, a bench has referred ***Meghachandra*** to a larger bench, saying that "no
16 ***Parmar*** is good law." Those three judgements, in a compilation, I will hand over to Your
17 Lordships, My Lord. But, that is the factual position of the ***Parmar***. That larger bench is
18 pending. But Your Lordships is in that larger combination. And that may not hold Your
19 Lordships' hands in taking whatever view Your Lordship feels is the correct view. And
20 specially, we will make it small... I will just put those three, four judgements together and then
21 pass on to Your Lordships in a compilation.

22 **JUSTICE SURYA KANT:** ***Parmar*** is at what point?

23 **P. S. PATWALIA:** Pardon me?

24 **JUSTICE SURYA KANT:** In ***Parmar***...

25 **P. S. PATWALIA:** ***Meghachandra*** said, "you cannot get seniority from a date before which
26 you are born in the cadre." ***Parmar*** said, "that date of occurrence of vacancy and initiation of
27 process or issuing advertisement is the relevant date, it will relate back." ***Parmar*** is those
28 Income Tax Officer's case. So ***Meghachandra***, relying on the subsequent judgements which
29 said, "seniority can only be from the date you actually join the service, you cannot get earlier
30 said, ***Parmar*** does not lay down good law." But in a later combination, Justice Oka had
31 actually referred it to a larger bench saying that, "no, ***Parmar*** does lay down, law is correct
32 and that reference needs to be relooked at." So, that is where ***Parmar*** stands today.

33 **CHIEF JUSTICE B.R. GAVAI:** Reference was decided by three Judges?

1 **P. S. PATWALIA:** Yes, the reference is by two Honourable Judges, My Lord. Reference is by
2 two Honourable Judges, and it is referred to a larger bench, which is still pending. "We pass
3 the following order. We are of the considered view that following questions need to be decided.
4 Whether the decision in the case of *Meghachandra* can be said to be a binding precedent in
5 the light of law laid down by the Constitution Bench in *Mervyn Coutinho* and the law laid
6 down by Coordinate Bench in *Subhash Reddy*." Then this exactly what... that *Parmar* is
7 right. This is what has been referred. So it will come before 5. That will not hold Your
8 Lordships' back. My Lord, while looking and considering and reconsidering, the only problem
9 in this seniority on roster is, if one process gets unduly delayed, then the problem comes. If it
10 happens within the year, there is no problem at all. It is the best way forward, because then
11 you are giving all four categories a representation, in every block of four. Because roster is 2-
12 1, 2-1, 2-1, 2 it will go on. And in case vacancies are... Promotees are more, they will bunch
13 below for that year. And next year, a fresh roster will be there. Fresh seniority will be
14 maintained. But the only problem is, if there are two years, three years delay as in *Delhi*, and
15 Promotees come, that, if Your Lordship will take care of that and according to me, there can
16 be a... because Your Lordship is focusing now on judicial services, and removing imbalance in
17 judicial services. So some framework, some scheme could be made by Your Lordships in this
18 combination, that the delay is minimised and does not in any case exceed one year. Because
19 that one year's buffer is there, next year's select list at the earliest will come into existence in
20 September of the next year. So, even if a process is delayed by one year and completed before
21 September of the next year, still this can work. This system can work, and it will give a good
22 result if it works. Because... So, My Lord, this is my submission on quota, and this is actually
23 my solution also before Your Lordships.

24 Now, roster. Now so far as quota is concerned, the next point. On quota, My Lord, the point is
25 that quota is really... *Triloki Nath* says on source of recruitment, it's not possible. So
26 therefore, My Lord, if Your Lordship just wants to make a note on the side of it, the crucial two
27 paras of *Triloki Nath* are at page 789 of the judgement, as it is presented before Your
28 Lordships. It doesn't have paragraphs. It is page 49, at page 49 of Volume V-A. Otherwise, in
29 the SCC Judgement, if Your Lordship would look at the SCC citation, the relevant paras are 45
30 and 46.

31 But, My Lord, so far as *Delhi* is concerned, so far as *Delhi* is concerned, my Clients whom I
32 am representing, and therefore, in quota we have put our second point. We are very happy
33 with the Amicus' suggestion. And therefore My Lord, while pointing out that this perhaps is
34 not judicially possible, then what I have said is, "alternatively it is submitted that in the event
35 this court comes to a considered decision that it is necessary and required for a quota to be

1 provided..." then our submission is what the Amicus is saying. 1:1 he is saying, we are quite
2 happy with that.

3 **JUSTICE JOYMALYA BAGCHI:** Mr. Patwalia, what is your response to *Jagannath*?

4 **P. S. PATWALIA:** To?

5 **JUSTICE JOYMALYA BAGCHI:** *Jagannath vs. Union of India, (1992) Supp 2 SCC*
6 *105*, paragraph 45 of the Amicus' brief?

7 **P.S. PATWALIA:** Para 45 of the Amicus'...?

8 **JUSTICE JOYMALYA BAGCHI:** Brief. That is one case where *Triloki* is considered, and
9 the experience is taken as a parameter for classification. That's the only case where experience
10 has been taken.

11 **P.S. PATWALIA:** Page 45?

12 **JUSTICE JOYMALYA BAGCHI:** Paragraph 45.

13 **P.S. PATWALIA:** Paragraph 45. In *Jagannath*... My Lord, yes, there also My Lord, in fact
14 the facts are totally different. The facts of *Jagannath* are totally different. There My Lord,
15 the facts were totally different actually. Yes, it's at page 292... at 296. In fact, this is My Lord,
16 of Compositors working in Government presses and the relief... My Lord, these are totally
17 different facts in which those observations are made. In fact, it's very crystal clear in more than
18 one occasion, and this is on pay scale. If Your Lordships will see, "it is obvious from the
19 recommendations of the Committee that highly skilled category was created to handle nature
20 of work which involved higher skills. The Compositors with longer service who were found fit
21 for promotion were appointed to Grade 1 and categorized at highly skilled. Since merit, there
22 is a valid basis..." This is different. It is on some merit and skill...

23 **JUSTICE JOYMALYA BAGCHI:** It's a sub-classification?

24 **P.S. PATWALIA:** Correct.

25 **JUSTICE JOYMALYA BAGCHI:** And the parameter, the object, and the sub-classification
26 on experience was held to be a good, rational nexus.

27 **P.S. PATWALIA:** But here the experience is the same for everybody, My Lord because here
28 we are all part of the same cadre. Here you are doing the classification...

1 **JUSTICE JOYMALYA BAGCHI:** Your case here would be that the experience here is of the
2 District Judge, entry level...?

3 **P.S. PATWALIA:** Correct.

4 **JUSTICE JOYMALYA BAGCHI:** And not the experience prior to that?

5 **P.S. PATWALIA:** Correct. And therefore, you are now going to classify them on the basis of
6 their birth-mark, their source of entry. That is held to be not valid at all.

7 **JUSTICE JOYMALYA BAGCHI:** Yes.

8 **P.S. PATWALIA:** In fact, in 2002 the judgement also, this weightage has been... In the *All*
9 *India Judge's* case, para 30, which I have quoted, it has been categorically disapproved,
10 which is subsequent to this judgement. Then lastly, I have dealt with that one suggestion of
11 the Amicus that they should have 50%. In the zone of consideration, you should include both,
12 50% from the direct and 50% from the Promotees. That will not solve any problem because
13 the zone of consideration is always four or five times the total number of vacancies. Now, if
14 the Promotees are higher in the cadre and direct are below, or if direct are higher and
15 Promotee are below, and you pick up equal and put them in the zone of consideration, when
16 you will make a common list, a senior person will remain on top of that list; the junior will
17 remain... For example, in *Delhi*, in my case, Promotees are occupying all the top posts and we
18 are at the bottom. Even if 50% of us are taken in the zone of consideration, we will remain in
19 the below 50% and the number of vacancies are much less. So, people from the top will be
20 taken. And that will be completely a mirage. It will not solve anything. We will just go in the
21 zone and come back from there. So, that is my submission to Your Lordships. I'm very grateful.

22 **JUSTICE SURYA KANT:** What should be a[UNCLEAR] in a case? Yearly recruitment is
23 fine. Ideally that roster points, so you can have [UNCLEAR] that two to Promotee, one to LCE
24 and the other goes to direct recruits. So that is an ideal situation where according to you,
25 that if it happens within one year. Now because of any unforeseen circumstances, if direct
26 recruitment does not take place in a year, and it's not a question of within next year or so.
27 Sometimes because it takes four years, five years, there is no recruitment or there is a single
28 vacancy, and the High Court takes a conscious decision, that why should they undergo the
29 entire selection process? After all the selection process itself is a costly affair. So, why should
30 they undergo for one vacancy? So, they wait for another vacancy to arise. It may take four years
31 or five years, and then the direct recruits claim those roster points. What is...?

1 **P. S. PATWALIA:** So, for the second part of Your Lordship's observation, the answer is
2 simple. Where the High Court decides not to put that vacancy in the public domain, there that
3 vacancy, then, is not coming. It's on the year when the vacancy is put in the public domain that
4 I will make my application. But yes, there is a problem in the first part of Your Lordship's
5 observation, that what happens when there is four or five years delay? Now my solution to that
6 is two-fold. One, Your Lordships can put in force, place a mechanism that the delay doesn't go
7 beyond one or two years. But if it does, then the only way that the submission can sustain is...

8 **JUSTICE SURYA KANT:** Then rota is deemed to have broken down.

9 **P. S. PATWALIA:** That is one answer. Then we go to length of service. For those facts then
10 My Lord, Your Lordship will leave it for the courts to cross those bridges when they actually
11 come to them. Because today Your Lordship is laying down a general principle. In a general
12 principle, I feel that Your Lordships could say in the same year, or make some safeguard that
13 it doesn't go beyond the next year. And then Your Lordship can mandate that it is unduly
14 delayed. The courts will examine the facts. My answer, hypothetically academic answer will
15 be, he should get it from the date it is actually put in the public domain. Not... The second part
16 Your Lordship says if there is one vacancy, High Court says, "I am not going to circulate one.
17 We will do it next year. We will circulate two or three together." Nobody can have a claim to
18 one, that one which is never circulated to say no, no, it actually arose in that year; therefore,
19 put me in that slot. My argument is not going that far. I am only saying on the year in which it
20 is circulated and all three streams are circulated. Because *Malik Mazhar* says, calculate the
21 vacancies by February... 1st February, calculate also those which are likely to arise during the
22 year, add also 5 or 15%, which is reduced to 5 later of anticipated and then circulate.

23 **JUSTICE SURYA KANT:** This can, very openly it can happen in the case of direct
24 recruitment. The reason is very obvious. First, you have only 25% quota. Then direct recruits
25 are expected to join at a younger age.

26 **P. S. PATWALIA:** Correct.

27 **JUSTICE SURYA KANT:** Therefore, their retirement, the resultant vacancy will arise only
28 if they are elevated before their retirement or maybe around...

29 **P. S. PATWALIA:** Correct.

30 **JUSTICE SURYA KANT:** Therefore the occurrence of vacancy within direct recruits 25%
31 quota will be...

- 1 **P. S. PATWALIA:** Far less.
- 2 **JUSTICE SURYA KANT:** Far less and it will be quite slow...
- 3 **P. S. PATWALIA:** Correct.
- 4 **JUSTICE SURYA KANT:** As compared to Promotees?
- 5 **P. S. PATWALIA:** Correct. Your Lordship is right. And therefore, every judgement says those
6 vacancies have to be calculated on cadre strength. So, if Promotees are retiring, the direct can't
7 get a piece of that cake. That is all Promotees vacancies. So, My Lord, that is actually the
8 submission before Your Lordships, and my actually point seems is that rota quota seems to be
9 the best answer to this problem. I'm very grateful, My Lord. I'm grateful.
- 10 **CHIEF JUSTICE B.R. GAVAI:** Thank you.
- 11 **P.S. PATWALIA:** My Lord, May I be excused for some time?
- 12 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 13 **P.S. PATWALIA:** Grateful.
- 14 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 15 **JAIDEEP GUPTA:** My Lord, the basic issues, My Lord, you have now heard. So, My Lord, I
16 am going to only see whether I can meet some of the propositions which have come from the
17 other side. But before that, may I My Lord summarize, the scope of the enquiry. Your Lordship
18 framed an issue, what should be the rule of seniority? Now, this is a case where there is already
19 a rule of seniority indicated in the *All India Judges 2002* and that is My Lord rota.
20 Therefore, the question is My Lord, really, whether there should be a change in the rule of
21 seniority. Now, in order to bring about this change My Lord, whether there should be or should
22 not be, the Amicus' application is for a particular purpose. The purpose is to have better
23 representation of Promotees in Principal District Judges. So, My Lord, we are not generally
24 considering or at least My Lord there is no argument that there is a general failure of the rota
25 system, and therefore, the rota system should be replaced by some other system altogether.
26 That's not My Lord the scope of these proceedings. The scope of the proceeding is whether the
27 rota system should remain in the light of the question as to whether this is giving proper
28 representation to the Promotees or not.

1 Now if that is so, My Lord, one has to find out what is the reason. Whether, first of all, whether
2 there is such a problem, and secondly, what is the reason for that problem arising within the
3 rota system? Because if we don't do that My Lord, then merely prescribing another rule to
4 correct one anomaly will not rectify the situation as such. That's my submission. So My Lord,
5 my first... what I wish to point out first is this, that it has to be empirically determined whether,
6 in fact, there is a problem or not. And I'm saying this... I said this My Lord, even when Your
7 Lordship was fixing the date, but I'm reiterating it because different states have different
8 figures. Now, question as to whether the Promotees are getting a fair share of the Principal
9 District Judge's post, differs from state to state. And in the State of West Bengal, the current
10 position is that there are 59 posts for Principal District Judges and only 27 of them are direct
11 recruits, and 32 of them are Promotees. And, My Lord, it is not even 1:1. It is more than that.
12 Promotees have a higher share. Now, there is no reason why, if that is the situation...

13 **CHIEF JUSTICE B.R. GAVAI:** But where is the list of...?

14 **JAIDEEP GUPTA:** Where is the?

15 **CHIEF JUSTICE B.R. GAVAI:** Whether the District Judge awards the list of work, in 16-
16 65 and the Promotees are below down, or are they in rotation?

17 **JAIDEEP GUPTA:** No, they are in the normal course of seniority, My Lord. I will have to...
18 I want to show Your Lordship the West Bengal Rule and the West Bengal SOP, for the purpose
19 of going to selection grade and super time. Because it's very detailed. And, My Lord, these are
20 rules which have worked fairly well, because we are finding My Lord, that the Promotees are
21 not discriminated at all in the cadre of... not in the cadre, My Lord, in the posts of Principal
22 District Judges.

23 Now, if the Principal District Judge's post is under the rota rule itself, capable of generating a
24 situation where the Promotees are having equal or even higher representation, then My Lord,
25 there is no reason why the rota rule should be replaced by something else today. So, My Lord,
26 I would submit, that the Amicus can even assist to this extent, collect the figures state-wise,
27 only that. How many Principal District Judges in every state? Is there really a problem in every
28 state? That, or even in the majority of the states, My Lord, that the Promotees are not getting
29 a fair share. I would respectfully submit My Lord, that that may throw a light on the situation
30 that this problem is not as significant as has been made out to be. And My Lord, there will
31 always be anecdotal situations such as, such and such person did not get a proper share, etc,
32 etc. But that will My Lord, not be the basis for changing a principle which Your Lordship said

1 in **All India Judges** was the most... was the one which is least likely to lead to disputes and
2 heartburn. That was the language in **All India Judges**, which Your Lordship has seen.

3 If, however, it is found that in most situations or in most states, the Promotees are not getting
4 their fair share despite the rota system, then we have to see why that is happening. Because on
5 the face of it, the rota system is meant to give far greater representation to the Promotees than
6 to the direct recruits. Yes, My Lord, that is the point I want to show Your Lordship. There can
7 be many ways of, My Lord, running this rota system. The way it is run in West Bengal and, I
8 believe, in the State of Gujarat and other places also. The first three, go to My Lord, the
9 Promotees. In the rota, 1, 2, 3. Then 4. The first three go to Promotees. The fourth one goes to
10 the direct recruit. So, My Lord, if this is working, in that event, 75% of the senior most persons
11 My Lord, will be Promotees, not direct recruits. Now, to lose that and have a 1:1 situation, will
12 actually go against their interest. They have a 3:1 situation today, if the rota system is working.

13 **CHIEF JUSTICE B.R. GAVAI:** That's for entry level in the entry?

14 **JAIDEEP GUPTA:** No. In the entry level, yes. Now in the...

15 **CHIEF JUSTICE B.R. GAVAI:** Not for the super time and...

16 **JAIDEEP GUPTA:** Now, therefore My Lord, Your Lordship will have to see how you get to
17 selection grade and super time. I just want to show Your Lordship the way it functions under
18 the rules in West Bengal. The rules are there in your... We have given it to Your Lordship
19 because the Nodal Counsel has only given half of the rules and one of the main clauses is
20 missing them. These rules were formulated in 2004 in an aftermath of the **All India Judges'**
21 case because in West Bengal, My Lord, at that point of time, there was no direct recruitment
22 at all. Since 1977, My Lord, there was no direct recruit. So therefore, a complete overhaul was
23 made in the rules in 2004 to give effect to the judgement. Please see 24, 25 and 26. 24 is
24 internal page 6. Because My Lord, if I have a concrete model in front of Your Lordships, it may
25 be easier to explain the point. Lordship sees 24, cadre. "The higher Judicial Officers in the
26 rank of District Judges of the service as mentioned in Part 2 shall include the following post
27 forming the cadre, namely District Judge, District Judge in selection grade, District Judge in
28 super timescale. The strength of the cadre of the service shall be as specified in Schedule 4 and
29 the Government in consultation with the High Court, may vary such strength from time to
30 time."

31 Then, "Members of the service. On and after coming into force of these rules, the higher
32 Judicial Officers in the rank of District Judges recruited to any of the posts as mentioned in
33 sub-rule 1 of Rule 24, in accordance with these rules, shall be members of the service.

1 Notwithstanding anything contained in the foregoing provisions of this rule, the higher
2 Judicial Officer in the rank of District Judges holding substantively or in officiating capacity
3 of the post referred to in sub-rule 1 of 24, shall, prior to the commencement of these rules, be
4 deemed to be members of the service."

5 Now, 26 is very important My Lord. Because this is given effect to by Your Lordships in the
6 **Malik Mazhar** case thereafter. "Method of recruitment. On or after the commencement of
7 these rules, the appointment of the higher Judicial Officers etc. in the rank of District Judge
8 in the post of District Judge is mentioned in Clause (a) of sub-rule 1 of Rule 24 shall be made:
9 (a) by direct recruitment from Bar. (b) By selection through promotion on the basis of merit
10 cum seniority and passing of a suitability test." So, this is already there My Lord in our rules,
11 what Your Lordship indicated in the May judgement. "From among such Judicial Officers
12 other than District Judges as mentioned in Clause (b) of sub-rule 1 of rule 6 of these rules."
13 Then "(c), By promotion strictly on the basis of merit through limited competitive
14 examinations of such Judicial Officers" etc. So (a) is direct, (b) is promotion, (c) is limited
15 competitive.

16 Now "Provided that the number of vacancies to be filled up by direct recruitment as stated in
17 Clause (a) shall not be more than 25% of the total permanent strength, and such recruitment
18 shall be as far as possible be made annually." Just see this My Lord. This is, My Lord, the rota
19 system will break down if My Lord, you do not at the same time create lists of both and then
20 go by way of the rota. "Provided further that the number of vacancies to be filled up by
21 promotion as stated in Clause (c) shall, subject to the provision of the third proviso, not be
22 more than 25% of the total permanent strength and such recruitment as shall be as far as
23 possible to be made annually. Provided also..." Now, this is very important. This is where the
24 carry-over formula was rejected. So, what happens My Lord if the direct recruitment is not
25 there in a particular year? Then it gets filled up, other than by way of direct. "Provided also
26 that where suitable persons are not available for appointment to the post of Judicial Officers
27 in the rank of District Judges under this part, the number of vacancies required to be filled up
28 by direct recruitment as stated in Clause (a) or by promotion as stated in Clause (c) shall not
29 be carried forward." So direct recruitment and Limited Competitive will not be carried forward
30 and "such vacancies may be filled up, (a) in respect of vacancies required to be filled up by
31 direct recruitment as stated in Clause (a) one, firstly from amongst eligible Judicial Officers in
32 the rank of District Judges selected by the method as stated in Clause (c)." So first look at the
33 Limited Competitive list, then "secondly, from amongst the eligible Judicial Officers in the
34 rank of District Judges selected by the method as stated in Clause (b)." So therefore, then go
35 to the other Promotees.

1 Then "(b), in respect of vacancies required to be filled up by promotion on the basis of merit
2 as stated in Clause (c), that is limited competitive from amongst the eligible Judicial Officers
3 selected by the method stated in Clause (b)." So, My Lord, nothing is left over. This is how the
4 rule is supposed to function. And it is supposed to function annually. And My Lord, **Malik**
5 **Mazhar** was designed to report back to see whether it is functioning annually or not. And My
6 Lord, by and large My Lord, Your Lordships have been, were able to do it, My Lord. Maybe in
7 some states it has not been ideal.

8 Then My Lord, 2 is not so relevant. Now I come My Lord, to the next aspect. How to go once
9 you enter? Once you enter, how do you go from there to selection grade and super timescale?
10 That is only My Lord, a...

11 **JUSTICE K. VINOD CHANDRAN:** So, 2 is relevant?

12 **JAIDEEP GUPTA:** Sorry?

13 **JUSTICE K. VINOD CHANDRAN:** 2 is relevant insofar as adjustment to senior scale
14 and...?

15 **JAIDEEP GUPTA:** Yes, I'm placing, My Lord. I'm very sorry My Lord. I am placing. "The
16 appointment of the higher Judicial Officers in the rank of District Judges in the post of District
17 Judge in Selection Grade and District Judge in Super Timescale, as referred to in Clauses (b)
18 and (c) of the sub rule of Rule 24 shall be made by the High Court by selection of the higher
19 Judicial Officers in the rank of District Judges of the service from posts as referred to in Clause
20 (a) and (b), correct My Lord. Respectively, and of that rule, and such appointment shall be
21 made by selection on the basis of merit cum seniority." Correct. Now, in this merit cum
22 seniority is given effect to by way of My Lord, an SOP, which I am placing a slightly older one.
23 Please only look at the revised one, because it has already got revised. Just see the revised.
24 This was prepared...

25 **VIBHA DATTA MAKHIJA:** It is 31, because that's the problem. The seniority has to be
26 worked out.

27 **JAIDEEP GUPTA:** All right, certainly.

28 **VIBHA DATTA MAKHIJA:** 31 is the problem.

29 **JAIDEEP GUPTA:** 31, My Lord. I'll place 31. There is no difficulty. Seniority. My Lord, may
30 I place seniority My Lord, because my learned friend is pointing out? "The seniority of the

1 higher Judicial Officers in the rank of District Judges appointed to the post, as referred to in
2 Clause A, B, and C of sub-rule (1) of Rule 24 shall, unless reduced in rank on account of
3 punishment, be determined in accordance with:

4 (a) the date of continuous officiation in service in case of officers promoted to the post as
5 referred to in Clause A.

6 (b) the date of order of appointment in the case of direct recruitment to the posts as referred
7 to in Clause A.

8 The date of order of selection to posts as referred to in clause B and C, respectively, as may be
9 specified in this regard by the High Court, provided that in the case of direct recruit, a
10 Promotee under Clause A, B, and C, as the case may be of 26. Two, the posts referred to in
11 Clause (a) of sub rule 1 of Rule 24 if the date of continuous officiation of the higher Judicial
12 Officer of the rank of District Judge is promoted to such post and the date of
13 joining/appointment of direct recruit be the same, the *inter se* seniority shall be fixed
14 according to the 40 point roster, as determined by the High Court from time to time, provided
15 further that the seniority amongst higher judicial officers, etc., promoted by an order of the
16 same date, or amongst direct recruits appointed on the same date, shall follow the order in
17 which their names have been recommended by the High Court provided also that the relative
18 seniority of the Judicial Officers of the West Bengal etc. appointed prior to the coming of date."
19 My Lord, that we are not so much concerned with. So therefore, My Lord, this makes it official
20 to follow that 40-point roster also. That's the scheme.

21 Now kindly come to having entered, how they will move up? Just see page 1 only. This is just
22 two, three pages. "Selection grade scale of pay. The revised as is relevant. Point no. 4, the
23 officer should not have been graded F-Poor." My Lord, this is the SOP. This was not in the
24 record. The rules were in the record but partially given. But this is My Lord, not on the record,
25 I'm just showing Your Lordship. Yes. This is a resolution of 2022. It gave existing and revised,
26 but My Lord, the revised came in. So, I'm not troubling Your Lordship anymore with My Lord,
27 what was existing then. "The officers should not have been graded F-Poor during the last three
28 years and should not also have been graded E-Average more than twice during the said period
29 of three years." Then Super Timescale. "The officers should not have been graded F-Poor
30 during the last three years and should not have been graded E-Average more than once during
31 the said period of three years." And then My Lord, the norms are revised as grading of officers
32 A- Outstanding, B- Very good, C- Good/Satisfactory, D- Above Average, E-Average, F-Poor.
33 So, My Lord, after this. So first of all, My Lord, when you are creating the zone of consideration,
34 you eliminate those who have not performed. Only that category is eliminated. The rest of the

1 people who come into the zone of consideration, on a 3:1, on a 3:1 basis My Lord, depending
2 on the number of vacancies in those scales of pay. The zone of consideration is after that My
3 Lord, only on seniority. So My Lord, this seniority that is there at the entry level, will reflect in
4 the selection as well as in the Super Timescale, subject only to this, that if performance has
5 been poor or average, then they fall by the wayside. So in any event, My Lord, there is no
6 question of giving them any faster avenue to Principal District Judges anyway. In fact, what
7 happens, therefore, is My Lord, the Super Timescale of pay, persons are inevitably My Lord,
8 all of them are accommodated as Principal District Judges or equivalents. After that, what is
9 left over My Lord, comes from outside the select... from out of the selection grade. So therefore
10 My Lord, the result is this, that, who will make it to the post of Principal District Judge now
11 depends on two factors only. Your seniority at entry level and your performance. Now, it
12 cannot therefore My Lord, become a quota in the higher pay grades, because there is a merit
13 criterion there. There cannot be a situation where you are not entitled to enter that zone of
14 consideration, but because there is a quota, you should go to the top. That can't be.

15 **JUSTICE SURYA KANT:** That is the growth criteria in every state.

16 **JAIDEEP GUPTA:** Yes. Correct, My Lord.

17 **JUSTICE SURYA KANT:** That is what, the roster points for the quota or the rota is only at
18 the recruitment level, at the initial recruitment?

19 **JAIDEEP GUPTA:** Yes.

20 **JUSTICE SURYA KANT:** It all depends on merit and your seniority.

21 **JAIDEEP GUPTA:** So, yes My Lord. So, therefore what I am submitting is that if the
22 seniority rule is correct at the base, then My Lord, it will reflect on the Principal District Judge
23 also, subject only to performance.

24 **JUSTICE SURYA KANT:** That comes in?

25 **JAIDEEP GUPTA:** Yes.

26 **JUSTICE SURYA KANT:** That selection grade and say, super timescale...

27 **JAIDEEP GUPTA:** Yes.

28 **JUSTICE SURYA KANT:** ...is not something that it is available to the entire cadre?

1 **JAIDEEP GUPTA:** No.

2 **JUSTICE SURYA KANT:** There is a cap. Normally it is 15%.

3 **JAIDEEP GUPTA:** 15%, yes correct. 35 and 15. Yes.

4 **JUSTICE SURYA KANT:** So you already articulated the entry into service and seniority
5 point in the beginning...

6 **JAIDEEP GUPTA:** Yes.

7 **JUSTICE SURYA KANT:** That somebody who is pushed behind, he will not reach within
8 the 15%, then, irrespective of the principle of seniority, he will never get it.

9 **JAIDEEP GUPTA:** Correct. So, therefore, My Lord, Your Lordship is investigating whether
10 at the entry level the seniority is being fixed in a manner, which will prevent them from
11 reaching the... in a fair manner, in a fair manner reaching the post of Principal District Judge.

12 **JUSTICE SURYA KANT:** That is the precise issue.

13 **JAIDEEP GUPTA:** Right. Quite right, My Lord. That is the only inquiry. We are not here My
14 Lord, generally investigating as to whether the rota rule has worked or not worked, etc., etc.
15 Now here, if that is so My Lord, if in the initiation itself, in the entry level, if the first three
16 posts are going to Promotees and the fourth one is going to the District Judge, then there is no
17 question of there being any unfairness anywhere up and down the service.

18 **JUSTICE SURYA KANT:** That will be a good point.

19 **JAIDEEP GUPTA:** Lordship, My Lord. That is what I'm trying to say My Lord. And so
20 therefore, taking this concrete example, Your Lordship may consider whether it is really
21 necessary to refix the seniority rule as per rota by any other process. Now, three suggestions
22 have been given. The first two require the seniority to be refixed within the cadre as time goes
23 on. My Lord, just have a look. This is My Lord, in the Amicus' submissions, right at in
24 paragraph, right at the end, Suggestion-1, Suggestion-2, Suggestion-3, page 48 of PDF 52, page
25 48. The first suggestion is... May I read My Lord?

26 **JUSTICE SURYA KANT:** Yes.

27 **JAIDEEP GUPTA:** "The additional experience as Judicial Officers constitutes a reasonable
28 and justified classification, on the basis of which Promotee District Judges can be classified as

1 a category who ought to be granted a quota for their effective representation at the post of
2 District Judge (selection grade), District Judge (super timescale) etc. The creation of quota
3 satisfies the twin test of classification based on intelligible differentia and reasonable nexus of
4 such classification where the objects ought to be achieved. Therefore, creation of such quota
5 is permissible under Article 14", etc., etc. Now My Lord, I respectfully submit, then you are
6 changing the seniority rule? Once they have entered the service and they have a particular
7 seniority rule, a new seniority rule will have to come into effect at the selection grade and at
8 the date of super timescale. That My Lord, is not correct in my respectful submission.

9 Now come to the second suggestion. "Alternatively, a zone of consideration for appointment
10 to the post of District Judge (selection grade) and District Judge (super time) should comprise
11 of 50% officers from the direct recruited District Judges and 50% promoted District Judges.
12 Thereafter the appointment would have to be made on recommendation on the basis of merit
13 cum seniority. Thus, in a zone of consideration, 50% officers would be senior-most Promotee
14 District Judges, and 50% would be senior-most directly recruited." Again, bifurcation of the
15 cadre and not only that, suppose there is already a 50% criteria to the super timescale, then
16 after that where is the merit cum seniority? You have to place them. In selection grade and
17 super timescale, since merit comes into the picture, then there can be no quota My Lord, in
18 my respectful submission.

19 But look at 3, suggestion-3, My Lord. The weightage suggestion is of course something which
20 Your Lordships are considering, and this is not an unacceptable suggestion otherwise. I will
21 indicate why My Lord it may not be appropriate in this case. So, first I place the suggestion.
22 "Alternatively, it is suggested that they may accept the recommendation of the Shetty
23 Committee and grant weightage to Promotee District Judges for experience in terms of one
24 year seniority for every five years of judicial service, subject to maximum of three years. It is
25 further submitted that these additional years of seniority may be considered as service in the
26 District Judge cadre. Thus, if a Promotee District Judge has been granted three years'
27 seniority, as per the aforesaid criteria, such a Promotee District Judge will require only two
28 more years of service in the District Judge cadre for being considered for grant of selection
29 grade. It is stated, acceptance of the recommendations of the Shetty Commission will require
30 modifying or dispensing with the 40% roster system of seniority" etc.

31 So, first of all, Suggestion-3 recognises that no change is proposed to the entry level. Seniority
32 will be as per roster in the entry level, but the seniority will change at selection grade and super
33 timescale. But here, in the third one, what is happening is, that they will be given weightage
34 based on their service in the lower cadres. That is, Civil Judge senior, Civil Judge junior. Now
35 My Lord, there is a big problem with this. My Lord, inevitably, this means that the longest

1 serving District Judge will always be senior to everybody else. This pushes down not only direct
2 recruits, it will push down those direct recruits who have been District Judges... who have been
3 Civil Judges in the past and have come in by way of the direct recruitment quota as per Your
4 Lordships' judgement in *Rejanish*. It will also push down the competitive, limited
5 competitive because the limited competitive people have necessarily had less experience as a
6 Civil Judge, My Lord, than those who have entered the service and remained in it all the way
7 till promotion. So, to give this weightage is re... ordering the system in such a way that the
8 senior-most person in the lower cadre will necessarily be the senior-most person in the higher
9 cadre. That is not My Lord, the purpose of all this exercise. The purpose of the exercise was to
10 pull up people who are right and who are not yet at the level of getting promotion. The LCE
11 was also for that purpose, direct recruitment is for that purpose. The direct recruitment of Civil
12 Judges, pursuant to Your Lordships' judgement, is for that purpose. The purpose is not to push
13 down merely based on their seniority in the lower cadre. That's why the weightage based on
14 experience in the lower cadre, may not be My Lord, an appropriate way to improve the
15 functioning or the efficiency of the judiciary. So My Lord, this is why My Lord, we are saying
16 that go back to the original and see why it is not working if it is not working, and if it is not
17 working in a particular State for some reason, it can be corrected.

18 I give an example, My Lord. In the West Bengal model, admittedly the Promotees will be senior
19 to the direct recruit at the entry level. Suppose My Lord, another State and My Lord, initially,
20 I don't know if that is the position today, but initially My Lord, Andhra Pradesh had followed
21 a model where the direct recruit was on the top and the Promotees came after that in the roster.
22 Now, if this led to a system where sufficient representation was not being given to Promotees
23 at the top, then My Lord, the correct thing to do is to change that to make sure...

24 **CHIEF JUSTICE B.R. GAVAI:** How they have changed the...? They are maintaining two
25 different reliefs for directs and for Promotees in Andhra as well as in Madras High Court.

26 **JAIDEEP GUPTA:** I believe, My Lord, all these have to be documented. That's my view, My
27 Lord.

28 **CHIEF JUSTICE B.R. GAVAI:** Because yesterday there was a petition filed before us.

29 **JAIDEEP GUPTA:** Yes. So just see, My Lord. It can be rectified simply by imposing the
30 correct rota. Yes.

31 **JUSTICE JOYMALYA BAGCHI:** In fact, referring through the Andhra Pradesh lists,
32 separate lists for the Promotee and the...

1 **JAIDEEP GUPTA:** Yes, My Lord. But this is My Lord, *ex facie* My Lord, it breaks up the
2 cadre. It breaks it up. My Lord, the kind of rivalries that will develop is unthinkable. But My
3 Lord, this makes my point. The point I am trying to make is maybe smaller fixes are necessary.
4 Maybe States where the direct recruit is going to the top at the entry level, should be changed
5 to bottom; maybe My Lord, these separate lists should not be maintained. Simpler solutions
6 may be there without breaking down the rota system, and then My Lord, if the rota system is
7 creating, in some cases My Lord, a problem, kindly look at it this way, on a matter of principle.
8 If on principle a particular rule is correct and appropriate, then the correct way to sort out any
9 difficulties arising with it is to revert to it rather than to take it away altogether.

10 **JUSTICE JOYMALYA BAGCHI:** Mr. Gupta, what is your take on this that the [UNCLEAR]
11 rule of the cadre being put into three separate seniority list on the basis of source of
12 recruitment?

13 **JAIDEEP GUPTA:** Yes.

14 **JUSTICE JOYMALYA BAGCHI:** Will it hold good in light of the ratio imposed?

15 **JAIDEEP GUPTA:** It won't, My Lord. It cannot. They have to be at least at the entry level
16 they must be equal. At least at the entry level. Except My Lord, if there is weightage to be given
17 and that weightage My Lord, Your Lordship knows, these weightage cases all arose in the
18 context of educational qualifications.

19 **JUSTICE JOYMALYA BAGCHI:** Weightage, Mr. Gupta, was in fact the inspiration for the
20 Amicus, we understand is the Shetty Commission Report.

21 **JAIDEEP GUPTA:** Right.

22 **JUSTICE JOYMALYA BAGCHI:** Which was not accepted in the 2002 judgement.

23 **JAIDEEP GUPTA:** Right, My Lord. Correct. But My Lord, to go back further, where did the
24 rule come from? The weightage rule. Most of them came from different educational
25 qualification, degree, diploma, this, that and the other. Now, everybody had an option of
26 getting those but here My Lord, the direct recruitee cannot possibly get experience in the lower
27 cadre. And the person who is in the lower cadre will necessarily have an advantage if you give
28 this weightage always.

29 Now, only one other question I'll address My Lord, because I have participated in the **Malik**
30 **Mazhar** for years and years and years. Now, it is true that every time High Courts do come

1 up with applications saying that for x, y and z reasons we haven't been able to stick to the time
2 frame, but Your Lordships will make sure that within the year it is done. Every year there is a
3 vacancy list published and My Lord, a schedule is set and that schedule is followed. Now, there
4 My Lord, the date which is supposed to be relevant is 31st of December of the year. Now on
5 31st of December, to the extent that it has been possible to give effect to it. There is no difficulty
6 in giving effect to the rota. If suppose something is left over, for some reason examination for
7 direct recruitment hasn't taken place, et cetera, et cetera, then My Lord, unfortunately, given
8 that **Meghachandra Singh**, is the current law in case and has not yet been overruled, they
9 should not, of course, be given seniority from a date prior to their coming into service. Then
10 My Lord, just out of necessity they will have to be given seniority on the date of appointment.
11 There is no option but every time there is a date of appointment, if there is more than one
12 category feeding that day, if there are Promotees as well as direct recruits coming on that
13 particular day, then My Lord, the rota system will apply to all of them on any day that there is
14 more than one source. But it should be possible and over a period of time, My Lord, I'm not
15 sure exactly today, but Your Lordships have Amicus in the **Malik Mazhar** matter, region
16 wise Amicus. There were four Amicus at one point of time, even now. So, therefore My
17 Lord, it ought to be possible to ensure that this system keeps working and after some years, it
18 ought to become self-perpetuating, in my respectful submission. So My Lord, these are my
19 suggestions. Deeply obliged.

20 **JAYANT BHUSHAN:** May I please, Your Lordships? My Lord, I appear for the applicant in
21 I.A. No. 26784, Harsh Agarwal. He is one of those My Lord, who was a Civil Judge, took the
22 direct recruitment exam under interim orders from the High Court and is the beneficiary of
23 Your Lordship's other judgment in **Rejanish**. So now he is a direct recruit, and my
24 submission is going to be slightly nuanced because in a sense, he is both; he has experience of
25 being a Civil Judge as also he is now a direct recruit. My Lord, this entire case started from
26 Your Lordship's order...

27 **CHIEF JUSTICE B.R. GAVAI:** When did he become a direct recruit?

28 **JAYANT BHUSHAN:** 2014 is the date of the exam.

29 **CHIEF JUSTICE B.R. GAVAI:** At that time, it was not permissible?

30 **JAYANT BHUSHAN:** I'm sorry, My Lord?

31 **CHIEF JUSTICE B.R. GAVAI:** At that time, it was not permissible for a Judicial Officer?

1 **JAYANT BHUSHAN:** No, he took the exam under interim orders of the High Court. Now,
2 those matters are listed before Your Lordship day after tomorrow on the 6th where Your
3 Lordship will decide what is to happen in each case and we expect that he will get the benefit.
4 Yes, he will get the benefit because he is under the four corners of Your Lordships'...

5 **CHIEF JUSTICE B.R. GAVAI:** Now you change the sides.

6 **JAYANT BHUSHAN:** That's true. Although I'm appearing for the same people.

7 **CHIEF JUSTICE B.R. GAVAI:** In that matter you argued from this side?

8 **JAYANT BHUSHAN:** Right. Now My Lord, this entire case started. If Your Lordship has
9 the note of the Amicus, the written submissions of the Amicus from Your Lordships' order
10 dated 7th October 2025. And I just want to read that, because that is the sort of fulcrum of how
11 this case started. Page 1 of the Amicus' note, or if Your Lordship has the orders separately My
12 Lord, this is the 7th October 2025. "This court, vide order dated 17th September 2025 had
13 considered an application filed by Shri Siddharth Bhatnagar, learned *Amicus Curiae*, who had
14 pointed out an anomalous situation that is in most of the state's Judicial Officers recruited as
15 Civil Judge often do not reach the level of Principal District Judge, leave aside reaching the
16 position of High Court judge. This has resulted in many bright young lawyers being dissuaded
17 from joining the service at the level of the Civil Judge."

18 So, Your Lordships' My Lord attempt was, that it should not be a situation where people are
19 dissuaded from joining as Civil Judges because they feel stagnated, they don't reach senior
20 scale, they don't reach District Judge, etc., for a very, very long time, it may take several years.
21 They don't even reach ADJ level for about 13, 14 years and therefore, they feel very, very
22 frustrated and stagnated. Now, that issue of stagnation and frustration and therefore, leading
23 to good people not joining, according to me, My Lord, has been sorted out by Your Lordship's
24 judgment in the other case, that ***Rejanish***. Because now there is no question after seven years
25 combined as lawyer and Civil Judge, either 7-0-0, 7-3-4, whatever, whatever combination,
26 seven years combined, you can now take the higher judicial service exam, subject, of course,
27 to achieving 35 years, which is on parity with direct recruits. So therefore, now the bright
28 people, which Your Lordship was worried about in this order, many bright young lawyers
29 being dissuaded from joining the service at the level of CJ, they can't have any grievance. Along
30 with the direct recruits, you can also take the exam at age 35.

31 **CHIEF JUSTICE B.R. GAVAI:** So had you lost in ***Rejanish***...

32 **JAYANT BHUSHAN:** Yes.

1 **CHIEF JUSTICE B.R. GAVAI:** ...you would have been on this side?

2 **JAYANT BHUSHAN:** Could be. Could be. But ultimately, we have to argue our client's case.

3 **CHIEF JUSTICE B.R. GAVAI:** No, I am talking about your client.

4 **JAYANT BHUSHAN:** And, of course, we have to assist Your Lordships, My Lord. So
5 therefore, now My Lord, insofar as these bright young lawyers who want to join as Civil Judges,
6 they cannot have a grievance that look, we will reach the principal district judge at a very late
7 age. Because you have the right to take now the direct recruitment exam at age 35, just as
8 lawyers do. So, you can't say, well, they will reach there at a younger age, I will not reach there
9 at a younger age. So therefore, My Lord, that problem is sorted out. So today, that issue, on
10 the basis of which this case started in my humble submission, My Lord has been sorted out.
11 Now, it was suggested by the Amicus that no, no, this system of being able to take direct
12 recruitment exam will not work because, otherwise they will be all the time working for this
13 exam and not be doing their work. That may not be quite correct. For the reason that there is
14 no guarantee of your succeeding in the exam and therefore, your ACRs are very important.
15 Supposing you don't succeed in the exam, your ACRs are important. So, you can't say no, no,
16 they will not do their work. In any case, that is now a concluded aspect that they are now
17 permitted to take the exam by the other constitution bench. And it is incorrect in my humble
18 submission to say that they will not be doing their regular work. Just as lawyers, they do their
19 regular work also while preparing for this exam. Similarly, it is unfounded to say that Civil
20 Judges will not be doing their regular work of being a Civil Judge and only be My Lord,
21 engaged in preparing for the exam. So, that is My Lord, one thing I wanted to get out of the
22 way.

23 Now My Lord, ultimately, the issue is should there be any quota or any My Lord, benefit given
24 to Civil Judges for reaching the higher scales, the Super Timescale, the senior scale, etc.? Now,
25 any quota is My Lord, admittedly a departure from merit. The moment you say that we are
26 going to give them a quota. Now, if Your Lordship sees My Lord, their suggestions, the Amicus'
27 suggestions. According to me My Lord, of the four suggestions 1, 2 and 4 are all based on quota.
28 3 is giving an additional one year for every five years of service as Civil Judge, some sort of a
29 leeway, and that is not quota in a sense, but an additional benefit. But 1, 2 and 4 are all quota.
30 Even 4, if Your Lordship sees, 4 is all the more quota, because what he is suggesting is, three
31 separate seniority lists and they will be for selection to higher post that ratio of 50:25:25, which
32 is the initial ratio for appointment of District Judges in the cadre that will be maintained. So,
33 that is exactly a quota. Now My Lord, my submission before Your Lordship is, that for higher
34 posts, merit should be the most important criterion. That is an accepted fact. And I want to

1 refer to one Constitution Bench judgement. We have just handed over a compilation and in
2 that compilation, this is the very first judgement. If Your Lordship turns to paragraph 9. Your
3 Lordship turns to page 11. I am reading from the fourth line, or the fifth line. "Mr. N. C.
4 Chatterjee argued..." does Your Lordship have that?

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

6 **JAYANT BHUSHAN:** "...that the introduction of the idea of merit into the procedure of
7 promotion brings in an element of personal evaluation and that personal evaluation opens the
8 door to the abusers of nepotism and favouritism, and so there was a violation of the
9 constitutional guarantee under Articles 14 and 16 of the Constitution. We are unable to accept
10 this argument as well-founded. The question of a proper promotion policy depends on various
11 conflicting factors. It is obvious, that the only method in which absolute objectivity can be
12 ensured is for all the promotions to be made entirely on the grounds of seniority. That means,
13 that if a post falls vacant, it is filled by the person who has served longest in the post
14 immediately below. But the trouble with the seniority system is that, it is so objective that it
15 fails to take any account of personal merit. As a system, it is fair to every official, except the
16 best ones. An official has nothing to win or lose, provided he does not actually become so
17 inefficient that disciplinary action has to be taken against him. But though the system is fair
18 to the officials concerned, it is a heavy burden on the public and a great strain on the efficient
19 handling of public business. The problem, therefore, is how to ensure reasonable prospect of
20 advancement to all officials, and at the same time to protect the public interest in having posts
21 filled by the most able man. In other words, the question is how to find the correct balance
22 between seniority and merit in a proper promotion policy? In this connection, Leonard D.
23 White had stated as follows: "The principal object of a promotion system is to secure the best
24 possible incumbents for the higher positions while maintaining the morale of the whole
25 organisation.' The main interest to be served is the public interest, not the personal interest of
26 members of the official group concerned."

27 Please mark this My Lord, because I will be making a submission on this. Now that Your
28 Lordship has sorted out, the system... the problem of good people not coming into the cadre
29 of Civil Judges by the other judgement. Now My Lord, it is the... what we are doing with...
30 dealing with now is, not to sort out the problems of people who have already come in earlier
31 as Civil Judges and who have not taken the Direct Recruitment Exam. Firstly, they will be able
32 to take it, and even otherwise, the idea is not to sort out their personal heartburns. The idea
33 is, ultimately, to better the system.

1 So therefore, it says "the main interest to be served is the public interest, not the personal
2 interest of members of the official group concerned. The public interest is best secured when
3 reasonable opportunities for promotion exists for all qualified employees, when really superior
4 civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve
5 and as vacancies occur and when selection for promotion is made on the sole basis of merit.
6 For the merit system ought to apply specifically making promotions as in the original
7 recruitment. Employees often prefer the rule of seniority, by which the eligible longest in
8 service is automatically awarded the promotion. Within limits seniority is entitled to
9 consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion
10 thereof. An experience is certainly a factor in the making of successful employee. Seniority is
11 given most weight in promotions from lowest to other sub-ordinate positions. As employees
12 move up the ladder of responsibility, it is entitled to less and less weight. When seniority is
13 made the sole determining factor at any level, it is a dangerous guide. It does not follow that
14 the employee longest in service in a particular grade is best suited for promotion to a higher
15 grade, the very opposite may be true."

16 And this is from the study of public administration, that is that White... Leonard D. White that
17 was quoted. "As a matter of long administrative practice, promotion to selection grade posts
18 in the Indian Police Service has been based on merit and seniority has been taken into
19 consideration only when merit of the candidate is otherwise equal, and we are unable to accept
20 the argument of Mr. N. C. Chatterjee that this procedure violates in any way the guarantee
21 under Article 14 and 16 of the Constitution." Now therefore, to the higher posts, whether it is
22 the IPS, IAS, or in this case, District Judges, and that, too, in the higher echelons of District
23 Judges, namely My Lord, selection grade and super timescale. The criterion has to be merit.
24 In fact, the rules provide so. The UP Rules which Your Lordship will find My Lord, are at
25 Volume IV A, page 942. It starts at page 934, My Lords. The UP Rules... the UP Higher Judicial
26 Service Rules. And if Your Lordship turns to Rule 27 and 27(a).

27 **CHIEF JUSTICE B.R. GAVAI:** You are referring to 1975 Rules?

28 **JAYANT BHUSHAN:** Yes. Your Lordship, Rule 27 on page 942 of that Volume and I believe
29 My Lord that most of the States have similar rules. West Bengal, my learned friend just read,
30 Mr. Gupta but it is also merit cum...

31 **CHIEF JUSTICE B.R. GAVAI:** Rule?

32 **JAYANT BHUSHAN:** Rule 27 at page 942.

33 **CHIEF JUSTICE B.R. GAVAI:** Appointment to the...?

1 **JAYANT BHUSHAN:** " Appointment to the selection grade. Appointment to the selection
2 grade post to the extent of 35% of cadre post of District Judges and service shall be made by
3 the court from amongst the members of the service who have put in not less than five years of
4 continuous service on the basis of merit cum seniority. And similarly super time scale...", the
5 same thing at the end Your Lordship will find on the basis of merit cum seniority, that's 27(a).

6 So, it has to be on the basis of merit cum seniority. That is what the Constitution Bench in
7 **Sant Ram Sharma** says that for higher posts it is always merit because that is the most
8 important. For the administration, for the benefit of the public at large, it is most important
9 that the best people are at the higher posts. Therefore, it has to be and that's what the rule
10 says. So, if it has to be on the basis of merit cum seniority, giving any benefit for going up in
11 seniority, namely one year for every five years, etc., becomes very less relevant. Once merit is
12 equal, only then seniority has to be taken into account.

13 Your Lordship had just seen My Lord that from **Sant Ram Sharma**, same thing is said in
14 several judgments. Your Lordship may just make a note. **(2001) 5 SCC**, page 60. This is
15 **Central Council for Research in Ayurveda**. It's at page 588 of the Compilation. Your
16 Lordships may just mark. Paragraphs are 6, 9 and 10. I won't read them since there is paucity
17 of time. Then there is **Haryana State Electronics vs. Seema Sharma, (2009) 7 SCC**.
18 This is at page 593 paragraphs are 7, 8 and 9 and **B. V. Sivaiah** at page 569. This is Volume
19 V-B. Volume V-B 1998... Sorry, not Volume V-B. This is the Compilation that I've just handed
20 over, my Compilation. **(1998) 6 SCC 720**, paragraphs are 8 to 10. Now, all of them say this.
21 Where the rule is merit cum seniority, then it will be essentially on merit, and seniority comes
22 into play only if merit is equal, which means that ultimately this whole thing about roster,
23 about this that and the other, actually becomes reasonably irrelevant. Now, in actual practice,
24 what happens is something quite different...

25 **CHIEF JUSTICE B.R. GAVAI:** So, according to you, if a person is more meritorious, then
26 even going down below the line...

27 **JAYANT BHUSHAN:** Yes.

28 **CHIEF JUSTICE B.R. GAVAI:** ...he can be picked up?

29 **JAYANT BHUSHAN:** Yes, absolutely right. That is what all these judgements say, including
30 Constitution Benches. For higher echelons of service, public interest demands at the best are
31 to man those posts. And the rule also says this, merit cum seniority, and merit cum seniority
32 has been explained in multiple judgements to say seniority comes into play only when merit is
33 equal. Now practically...

1 **JUSTICE SURYA KANT:** All these judgements that you are citing Mr. Jayant, are based on
2 the statutory rules?

3 **JAYANT BHUSHAN:** Yes.

4 **JUSTICE SURYA KANT:** And there the rule itself contemplates, merit cum seniority. So
5 you have to of course, only two considerations. Seniority will bring in the zone of consideration
6 and seniority will then give you... if you are equal in merit.

7 **JAYANT BHUSHAN:** Yes.

8 **JUSTICE SURYA KANT:** Now that is all based on the... where the rule provides.

9 **JAYANT BHUSHAN:** Right. Now, our rule also provides this. I've just shown to Your
10 Lordships My Lord, the rule also provides this. Our rule also provides this, and rightly so,
11 because *Sant Ram Sharma* the constitution bench says in the higher post, it is only merit
12 which should prevail. So rightly provides this.

13 **JUSTICE SURYA KANT:** That's right. So, your contention is that where the rule provides
14 the merit will prevail?

15 **JAYANT BHUSHAN:** Yes. Right.

16 **JUSTICE SURYA KANT:** Only when the rule provides?

17 **JAYANT BHUSHAN:** Correct. Correct.

18 **JUSTICE SURYA KANT:** Suppose there is no rule?

19 **JAYANT BHUSHAN:** No, I am saying My Lord, even if there is no rule, according to *Sant*
20 *Ram Sharma*, the higher echelons only merit must be there and...

21 **JUSTICE SURYA KANT:** In *Sant Ram* also there is a rule.

22 **JAYANT BHUSHAN:** No. But *Sant Ram* quoted My Lord, the philosophy behind it. As to
23 it was not interpreting the rule. May I read those paragraphs of *Sant Ram*?

24 **JUSTICE SURYA KANT:** Government of India Memorandum of 1954...

25 **JAYANT BHUSHAN:** Yes.

1 **JUSTICE SURYA KANT:** Which in the absence of rule...

2 **JAYANT BHUSHAN:** Yes.

3 **JUSTICE SURYA KANT:** ...undoubtedly supplements the rule, and there it was
4 contemplated that in the event of the... say appointment on the selection post of 50 Inspector
5 General of Police or Inspector General of Police, merit is twofold. That you may be legally right
6 to say that when the rule provides or even executive instruction gives sense of rule provide.

7 **JAYANT BHUSHAN:** My Lord, **Sant Ram** that quotation from that White was not based
8 on any rule. Essentially, it said what is desirable. What is desirable is, that in the higher
9 echelons of public service, it is merit which should prevail the rule. I mean, that is what is
10 desirable. Of course, Your Lordship is right as to if there is a rule which says something
11 different, will it be struck down on the basis that **Sant Ram** says that this is desirable? That's
12 another question. But I'm saying that apart from interpreting the rule, **Sant Ram** says it is
13 desirable in the higher echelons to have merit. And therefore, My Lord, when the rule itself
14 provides merit, merit cum seniority, which has been interpreted in multiple judgements to
15 mean that merit alone is the important thing. It is, seniority is only a tie-breaker.

16 Therefore, My Lord, my submission before Your Lordship is, that the proposal to have a sort
17 of a quota to push people up the seniority ladder, and therefore, My Lord, get them to become
18 Super Timescale, etc., on an earlier basis would militate against this, the merit rule and the
19 merit principle. Then how do you determine?

20 Now My Lord, I must tell Your Lordship, as to factually actually on the ground what happens,
21 according to what I have been told by my clients. On the ground, they do some sort of a
22 suitability test and those who pass the suitability test are then recommended on the basis of
23 their seniority. And therefore, seniority becomes more important, quite contrary My Lord, to
24 this rule. That is what the High Courts are doing, and that is not what they should be doing. If
25 the rule is to be interpreted, My Lord, it is the merit which is important, not that you do some
26 sort of the suitability test, namely somebody who's completely unsuitable is knocked out; the
27 remaining go through in order of their seniority. Actually, that's the problem. It is only because
28 on the ground practically, this is being done on the basis of seniority and not merit, which is a
29 rule. That is why My Lord, this whole fight for who is to be senior, etc. has become so critical.
30 But I am urging before Your Lordship because Your Lordship is sitting in a constitution bench
31 that this should be corrected. What is happening on the ground that broadly people are being
32 appointed on the basis of their seniority should be corrected because that is not in accordance
33 with the rule, and not in accordance with the principal laid down in **Sant Ram Sharma**.

1 Now, further question may arise, that how do you determine merit? Now My Lord at the stage
 2 of promotion from Civil Judges to District Judge cadre there is a test, an objective type test.
 3 It's not like you'll write an essay or anything objective type, multiple choice questions which
 4 will determine your knowledge of law. Now that can be done at every stage, whether it's
 5 Selection Grade, Super Timescale, et cetera, at every stage, this test can be done and combine
 6 it with ACRs, of course how you have been working, how you have been conducting, et cetera.
 7 Your ACRs are also important. ACRs, of course, are the most subjective and the least objective
 8 but they certainly My Lord, can't be done away with. So, some sort of a combination of an
 9 objective test along with ACR is how merit can be determined. So, that is what needs to be
 10 done.

11 Now My Lord, Your Lordship had asked, I'll just come to that My Lord, about that **Triloki**
 12 **Nath**, that 1974, I'll just come to that in a moment. My next submission My Lord is, that this
 13 quota that my learned friend, the Amicus, has suggested in Suggestions-1, 3 and 4, what Your
 14 Lordships have laid down in **Indra Sawhney**, which is nine judges, is there cannot be a quota
 15 in promotional posts. That, of course, there was a Constitutional Amendment, Your Lordship
 16 knows My Lord, that Article 16, 4(a), 4(b), etc., and Article 355 were amended. But that is all
 17 about Scheduled Castes and Scheduled Tribes. Otherwise, the principal laid down in **Indra**
 18 **Sawhney** that, there cannot be a quota and promotional post, that, of course, has been
 19 watered down by the Constitutional Amendments which don't apply to us. But, those
 20 principles will still apply. If Your Lordship has **Indra Sawhney**, it starts at page 13. Your
 21 Lordship has para 822 at page 538 of my compilation. 538 of my compilation My Lord,
 22 paragraph 822. The compilation that I've just handed over My Lord.

23 **CHIEF JUSTICE B.R. GAVAI:** Which paragraph are you referring?

24 **JAYANT BHUSHAN:** 822 My Lord. "Reservation in the case of promotion..." Does Your
 25 Lordships have that now? "...is normally provided only where the promotion is by selection,
 26 that is, on the basis of merit. Or if the promotion is on the basis of seniority, such a rule may
 27 not be called for. In such a case, the position obtaining in the lower category gets reflected in
 28 the higher category, promotion category also. Where, however, promotion is based on merit,
 29 it may happen that members of backward classes may not get selected in the same proportion
 30 as is obtaining in the lower category. With a view to ensure similar representation in the higher
 31 category also, reservation is thought of even in the matter of promotion based on selection."

32 And then they refer to **Rangachari** where that promotion in the reservation and promotion
 33 had been upheld. And **Rangachari** is thereafter referred to, and Your Lordship may only My
 34 Lord, come to two pages later, 823 starts on the next page, and I just want to read sub-

1 paragraph (b) of Justice Gajendra Gadkar's judgement in **Rangachari**. Of course,
2 **Rangachari** was then set aside by **Indra Sawhney**. But just My Lord, where he says...

3 **CHIEF JUSTICE B.R. GAVAI:** No, **Rangachari** was set aside by **N.M. Thomas**.

4 **JAYANT BHUSHAN:** I see.

5 **PETITIONER'S COUNSEL:** Seven judges.

6 **JAYANT BHUSHAN:** Seven judges. I see. And then thereafter they also brought out in this
7 nine judges. They say keep...

8 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR].

9 **JAYANT BHUSHAN:** So if Your Lordship just sees (d), because even in **Rangachari**,
10 where reservation and promotions had been upheld. They had said that "reservation of
11 appointments or posts may theoretically and conceivably means impairment of efficiency. But
12 the risk involved in sacrificing efficiency of administration must always be borne in mind,
13 when any state sets about making a provision for reservation of appointment of posts." So, of
14 course, there can't be any cavil on that. The moment you make reservations in something
15 which is governed by merit, then you are sacrificing merit in a sense, or efficiency in a sense.
16 Question is, in the balance, is it worth it or not? In the case of backward classes, of course,
17 because they have been, for generations, been disadvantaged, therefore, they need a push up,
18 and therefore that was the basis My Lord, on which **Rangachari** had held that, of course, set
19 aside and thereafter the Constitution was amended.

20 Now My Lord, may have paragraph 827. 827, I'm not going to read My Lord. They say that
21 **Rangachari** does not appear to be acceptable. Now just have 828. "We see no justification
22 to multiply the risk which would be the consequence of holding that reservation can be
23 provided even in a matter of promotion. While it is certainly just to say that a handicap should
24 be given to backward class of citizens at the stage of initial appointment, it would be a serious
25 and unacceptable inroad into the rule of equality of opportunity to say that such a handicap
26 should be provided at every stage of promotion throughout their career. That would mean
27 creation of a permanent, separate category apart from the mainstream." Now, this is what is
28 being suggested, that you reserve 75% of posts in the District Judge cadre at the entry level
29 and thereafter, even at the stage of promotion, you give some sort of a reservation to people
30 who have come from the Promotees, from Civil Judges. "That would mean creation of a
31 permanent separate category apart from the mainstream, a vertical division of the
32 administrative apparatus."

1 **CHIEF JUSTICE B.R. GAVAI:** Then 64 has been brought in.

2 **JAYANT BHUSHAN:** That's only for Scheduled Caste and Scheduled Tribes. So therefore,
3 My Lord, this principle has been watered down only for... we are not dealing with Scheduled
4 Caste and Scheduled Tribes. 16(4)(a), 16(4)(b) will not apply. That was brought in to override
5 this judgement for the purpose of Scheduled Caste and Scheduled Tribes. If it was a case of
6 reservation for Scheduled Caste and Scheduled Tribes, certainly 16(4)(a) etc., would have been
7 relevant, but for our purpose, no.

8 **CHIEF JUSTICE B.R. GAVAI:** Therefore, these observations may not be relevant today,
9 insofar as promotion...

10 **JAYANT BHUSHAN:** So far as Scheduled Caste and Scheduled Tribes are concerned, they
11 may not be relevant. But so far as the principal laid down by, of course, legislation cannot
12 overrule a judgement. They can only take away the basis. So...

13 **CHIEF JUSTICE B.R. GAVAI:** No, no, what they say is if a reservation is provided for
14 Scheduled Caste and Scheduled Tribes...

15 **JAYANT BHUSHAN:** Yes.

16 **CHIEF JUSTICE B.R. GAVAI:** Even if they work or do not work, they'll be assured that
17 they will be getting a promotion. Here what is being proposed by the learned Amicus is not
18 that there will be a guaranteed promotion. There will be some [UNCLEAR] given for them.

19 **JAYANT BHUSHAN:** That's what I'm saying.

20 **CHIEF JUSTICE B.R. GAVAI:** If they are not meritorious, they will never be considered.

21 **JAYANT BHUSHAN:** Correct.

22 **CHIEF JUSTICE B.R. GAVAI:** So, therefore, this analogy will not apply. Analogy here is
23 that if a reservation is for Schedule Caste and Schedule Tribe at every level, then there will be
24 no incentive for them to work or no urge for work. They will be assured that by passage of time,
25 I'm going to get in [UNCLEAR].

26 **JAYANT BHUSHAN:** That's exactly what I'm saying.

27 **CHIEF JUSTICE B.R. GAVAI:** Here what is being proposed is not that that there will be a
28 fixed quota, and they will get in, irrespective of the merit.

1 **JAYANT BHUSHAN:** That's what is proposed.

2 **CHIEF JUSTICE B.R. GAVAI:** No, no.

3 **JAYANT BHUSHAN:** They have to make a 50% quota.

4 **CHIEF JUSTICE B.R. GAVAI:** I don't think that is what...

5 **JAYANT BHUSHAN:** That's what a reservation in promotion means, that there's a quota...

6 **CHIEF JUSTICE B.R. GAVAI:** That can't... no Bench would say that a meritless person or
7 a person thoroughly incompetent should also be promoted merely because he's senior.

8 **JAYANT BHUSHAN:** My Lord, I absolutely appreciate. Now the question is, what *Indra*
9 *Sawhney* has said is, there will be no incentive for you to compete with the other categories,
10 namely the direct recruit.

11 **CHIEF JUSTICE B.R. GAVAI:** No. There is a compartmentalization. 25% will be reserved
12 for Scheduled Caste at every level.

13 **JAYANT BHUSHAN:** That's what is the fourth suggestion. If Your Lordship looks at the
14 fourth suggestion, that is what it says that the same quota of 50, 25, 25.

15 **CHIEF JUSTICE B.R. GAVAI:** You have exceeded your half an hour.

16 **JAYANT BHUSHAN:** Just very, very quickly My Lord. So therefore, My Lord, in paragraph
17 828 this is what it says, that otherwise if you now demarcate these three streams, or two
18 streams, in our case, three streams, whatever, then that will not lead to the efficiency of
19 administration.

20 **CHIEF JUSTICE B.R. GAVAI:** So what is being proposed is, demarcation of 50-50?

21 **JAYANT BHUSHAN:** Even 50-50, then you are competing...

22 **CHIEF JUSTICE B.R. GAVAI:** So, it's not a compatible. So even in that suggestion, the
23 persons who are directly appointed will have a better chance because their entry level is 25%
24 and what is proposed is 50 %. So, double the number of...

25 **JAYANT BHUSHAN:** That's why I'm saying that I don't want... we don't want that benefit.
26 Even though now I've become a direct recruit, I am saying for the purpose of merit, what is

1 encouraged is that once that stream becomes homogenous, then you compete with everybody
2 in that stream.

3 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR].

4 **JAYANT BHUSHAN:** Correct. No. So, I am arguing it on the basis of *Indra Sawhney*,
5 which is nine judges.

6 **CHIEF JUSTICE B.R. GAVAI:** But right now it is being argued that once you enter a
7 particular cadre, you lose your birth-mark.

8 **JAYANT BHUSHAN:** That's the sort of basic thing what I'm saying by *Indra Sawhney* in
9 828 when they are saying that once you make this reservation even in promotion, then you are
10 competing only with your own category, namely, once you're supposing you do this 50-50,
11 which is what is proposed in the first alternative, then the Civil Judges will be competing the
12 Promotee Civil Judges will be competing only with the Promotee Civil Judges and not because
13 your category of... your quota 50% is assured. You are then not competing with the direct
14 recruits, which is something which is not desirable, according to *Indra Sawhney*. Of course,
15 the constitutional amendment related only to Scheduled Castes, Scheduled Tribe, that will not
16 apply to us. That did away with this. But otherwise, the principle that has been laid down by
17 nine judges will still apply. Then My Lord, at paragraph 834, whether reservations... Question
18 no. 8. 832, whether reservations are anti-meritarian?

19 **CHIEF JUSTICE B.R. GAVAI:** That is answered in the negative.

20 **JAYANT BHUSHAN:** Only because...

21 **CHIEF JUSTICE B.R. GAVAI:** *Indra Sawhney* says that the reservations are not anti-
22 meritarian.

23 **JAYANT BHUSHAN:** Right. So, because there is sort of a benefit in giving the benefit to the
24 people who are traditionally disadvantaged. The third suggestion that the Amicus has given
25 that one year for every five years. Now, the question that arises is, does *Triloki Nath* because,
26 the first two judgements, My Lord, *Coutinho*, etc., don't permit it. But *Triloki Nath*, they
27 argue as kind of distinguished them and said that they deviated and distinguished and said
28 that, yes, this can be permitted, so long as it is not from that stream. Now, I want to show Your
29 Lordships My Lord, two paragraphs of *Triloki Nath* which are in the Amicus' written
30 submissions; I don't need to take Your Lordships, My Lord to that. If Your Lordship has
31 paragraphs 45 and 46 on page 35 of the Amicus' note. And I'll explain my submission to Your

1 Lordship before I read them. If the classification is based on a criterion which is directly
2 relatable...

3 **CHIEF JUSTICE B.R. GAVAI:** Para?

4 **JAYANT BHUSHAN:** My Lord, this is on page 35 of his note is the quotation from *Triloki*
5 *Nath* and I am referring to 45 and 46.

6 **CHIEF JUSTICE B.R. GAVAI:** Thus, all that *Roshan Lal...*

7 **JAYANT BHUSHAN:** Yes. "Thus, all that *Roshan Lal's* case lays down is that direct
8 recruits and Promotees lose their birthmarks and fusion into a common stream of service, and
9 they cannot thereafter be treated differently by reference to the consideration that they were
10 recruited from different sources. Their genetic blemishes disappear once they are integrated
11 into a common class and cannot be revived so as to make equals unequals once again. *Roshan*
12 *Lal's* case is thus no authority for the proposition that if direct recruits and Promotees are
13 integrated into one class, they cannot be classified for purposes of promotion on a basis other
14 than the one that they were drawn from different sources. In the instant case, classification
15 rests fairly and squarely on the consideration of educational qualifications. Graduates alone
16 shall go into the higher post..."

17 **CHIEF JUSTICE B.R. GAVAI:** That was already argued by Mr. Gupta.

18 **JAYANT BHUSHAN:** No. I'm saying something a little different. "Graduates alone shall go
19 into the higher post no matter whether they were appointed as Assistant Engineer directly or
20 by promotion." Now please mark this. Which means graduation is the classification that you
21 are using. Those who are graduates will be given that benefit. Graduates can come from either
22 of those two sources. They are not relatable only to one source. That's why I'm giving emphasis
23 on this sentence. In our case, what the Amicus' suggestion is that experience as Civil Judges is
24 the criterion; that applies only to one of the two sources, and therefore it's directly relatable to
25 the source. That is not permissible. *Triloki Nath* did not say that if the classification that you
26 are using is directly relatable to the source, and that is also permissible, and that is why they
27 were at pains to say "graduates alone shall go into the higher post, no matter whether they
28 were appointed as Assistant Engineers directly or by promotion." Namely graduation could be
29 a qualification which both those categories could have. So, only those persons who had that
30 graduation would be given the benefits. There was nothing wrong with that. But what he is
31 proposing applies only to one category that is, the Civil Judges Promotees, and not to the other
32 category that is My Lord, that the direct recruits. That is not permissible.

1 Now alternatively, my suggestion before Your Lordship is supposing Your Lordships were not
2 to agree with me on this argument of *Triloki Nath* not being applicable, then, in which case,
3 it should be given to those who have worked as Civil Judges, whether or not they are now in
4 the direct recruitment category. Persons like me. I was a Civil Judge. I worked for several years
5 as a Civil Judge. Today, I've qualified for the Direct Recruitment Exam. So, now I'm a direct
6 recruit. So, if you are going to give that benefit on the basis that somebody who has that
7 experience, who has worked...

8 **CHIEF JUSTICE B.R. GAVAI:** That should also be given to you?

9 **JAYANT BHUSHAN:** That should also be given to me. Because the classification is based
10 on this, that those who have their experience will turn out to be better judges. That is the
11 benefit to them. Then, that should be given to me as well, not only to the Promotees. That's my
12 submission on that, My Lord. Then My Lord, Justice Bagchi had asked about *Jagannath*. I
13 just want to quickly distinguish that. That was (a) only for pay scale, not for the purpose of
14 giving any benefit for promotion.

15 **JUSTICE JOYMALYA BAGCHI:** Here also, they are not asking for promotion; only their
16 consideration for a particular post in a cadre.

17 **JAYANT BHUSHAN:** In a sense, it's a promotion. Your Lordship has seen the rule. There is
18 a rule prescribed as to how you are going to be promoted to senior scale, and how it is merit
19 cum seniority, that is Rule 27 and Rule 27(a). In the cadre there are separate posts, for which
20 a promotion criteria is laid down.

21 **JUSTICE JOYMALYA BAGCHI:** But, loosely used, but not a promotion in the sense of
22 understanding by service [UNCLEAR].

23 **JAYANT BHUSHAN:** Now, secondly, in that case it was, as my understanding is My Lord,
24 again, not based on source. In this case, it is based purely on source. You are proposing a
25 distinction between Civil Judges and direct recruits, only on the basis of their experience as
26 Civil Judges.

27 **CHIEF JUSTICE B.R. GAVAI:** You are supposed to conclude by 1 o'clock, because
28 [UNCLEAR] to them.

29 **JAYANT BHUSHAN:** Therefore that was my last submission. That *Jagannath*, in any
30 case, *Jagannath* is three judges. Your Lordships is sitting in five, and My Lord, it may not

1 be laying down the correct law, if it were to say that no, no, even if it is relates to source, et
2 cetera it can be done. According to me, it can't. That's my humble submission.

3 **CHIEF JUSTICE B.R. GAVAI:** You all... everybody has to conclude by 1 o'clock, otherwise
4 we will be unfair to them. We have granted the one day's time.

5 **GOPAL SANKARANARAYANAN:** I'm always the person who this is told to.

6 **CHIEF JUSTICE B.R. GAVAI:** No, no, that's what I am [UNCLEAR] out.

7 **GOPAL SANKARANARAYANAN:** I'm following the sequence.

8 **CHIEF JUSTICE B.R. GAVAI:** We had granted them one day. They finished in one day.

9 **GOPAL SANKARANARAYANAN:** I am only adhering...

10 **CHIEF JUSTICE B.R. GAVAI:** We could have finished in one day, but the timings, which
11 you are around it now.

12 **GOPAL SANKARANARAYANAN:** My submission is in Volume II, R-4. II, R-4 and I've
13 had copies also.

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

15 **GOPAL SANKARANARAYANAN:** I have three broad submissions. Four pages is what
16 those submissions are. So, I'll just immediately... I'll immediately tell Your Lordships what
17 they are. The first, My Lords, Your Lordships have gone through the data points. You've seen
18 the details. And I must say at the outset, we could not have had a fairer Amicus. Mr. Bhatnagar
19 is possibly the gold standard, when it comes to that, in how fair he is, in putting across
20 submissions and putting across things, which may not completely comport with the argument
21 that he's going to make as well. So, the Amicus...

22 **CHIEF JUSTICE B.R. GAVAI:** This data which he has given is based on the affidavits of
23 the [UNCLEAR] reports?

24 **GOPAL SANKARANARAYANAN:** Yes, of course. And I'm saying now that we have those,
25 Your Lordships will recall that the first two orders which were passed in this matter, which are
26 dated 17th September, '25 and 7th October, '25... I'm not reading it, but if Your Lordships'
27 going to see that. There were examples at that point which made one feel, that, look, there is a
28 complete imbalance in this. Now that the... some of the data has come, not all of it, but some

1 of the data has come from the states, possibly not in the most ideal form, but they've put last
2 five years. They've shown with reference to Principal District Judges as well as District Judges,
3 etc. We find that that may not be entirely justified at a national level, clearly. There is...

4 **CHIEF JUSTICE B.R. GAVAI:** No. We quite appreciate that in different states...

5 **GOPAL SANKARANARAYANAN:** Correct.

6 **CHIEF JUSTICE B.R. GAVAI:** We are in a different position.

7 **GOPAL SANKARANARAYANAN:** Correct. Very different position. So now...

8 **CHIEF JUSTICE B.R. GAVAI:** In Delhi, the Promotees are having the upper hand.

9 **GOPAL SANKARANARAYANAN:** Correct.

10 **CHIEF JUSTICE B.R. GAVAI:** Insofar as Kolkata is concerned, there appears to be an
11 equilibrium that is somewhat balanced 50-50.

12 **GOPAL SANKARANARAYANAN:** Correct.

13 **CHIEF JUSTICE B.R. GAVAI:** In some states, it is totally dominated by the [UNCLEAR].
14 So there is no uniformity.

15 **GOPAL SANKARANARAYANAN:** So, because there has been that shift that we have found
16 now, from the initial orders which led to this Constitution and this question going on, I believe
17 that one of the major... there are two premises as far as I'm concerned. Page 1, I've set it out.
18 Two major premises that led to this very issue and the Constitution Bench looking at it. The
19 first was that Promotee judges are losing out on career progression. That may not be accurate.
20 We have found that it could be both ways.

21 **CHIEF JUSTICE B.R. GAVAI:** It's a different situation in different states?

22 **GOPAL SANKARANARAYANAN:** Yes, it's a different situation. Exactly. Which is why for
23 a Constitution Bench to say that there is an underlying malaise, which is that Promotee Judges
24 are losing out vis-a-vis direct recruit Judges may not be an accurate premise to start with. I
25 think that is accepted. Nobody is doubting that. Across the board that is not...

26 **CHIEF JUSTICE B.R. GAVAI:** That is also now another premise that in some States, that
27 position exists. In some States...

1 **GOPAL SANKARANARAYANAN:** It's the converse.

2 **CHIEF JUSTICE B.R. GAVAI:** The direct recruits are at a disadvantage.

3 **GOPAL SANKARANARAYANAN:** Correct, correct, correct.

4 **CHIEF JUSTICE B.R. GAVAI:** So, is it not more the reason that there has to be some
5 uniform...

6 **GOPAL SANKARANARAYANAN:** No, My Lords...

7 **CHIEF JUSTICE B.R. GAVAI:** Uniformity to be adopted in all the States so that...?

8 **GOPAL SANKARANARAYANAN:** If and I adopt Mr. Bhushan's submission on this. If we
9 are supposed to look at it purely as a service dispute, saying that look, Direct Recruits vs
10 Promotees, maybe there is something to be said about that. But My Lords, as a Constitution
11 Bench when Your Lordships are looking at the judiciary in this country, I would beg to differ
12 and say please don't look at it as a service dispute.

13 **CHIEF JUSTICE B.R. GAVAI:** No. We are not... Please don't misunderstand it. We are not
14 looking it as a service dispute.

15 **GOPAL SANKARANARAYANAN:** Yes, but it becomes...

16 **CHIEF JUSTICE B.R. GAVAI:** We are looking it with a larger objective of enhancing the
17 efficiency of administration of justice in the entire country.

18 **GOPAL SANKARANARAYANAN:** Correct, correct. So, if we have to look at it like that,
19 let's consider what are the parameters being adopted for that purpose, about efficiency of
20 justice. Absolutely right, that's the only parameter. That's the only lens with which you must
21 look at it. So if you're looking at efficiency of justice, is there any data that has come on record
22 to suggest that Promotee Judges are better served at serving the ends of efficiency of justice as
23 against Direct Recruit Judges, or that direct recruit Judges are better, or that a 1:1 ratio is
24 necessary which will help serve this? If we don't have any data and to be honest My Lords, I
25 haven't found any. I haven't found any being placed on record. That link doesn't exist. The link
26 between the necessary ratios between direct recruits and Promotees, the fact that one is better
27 than the other, serving the ends of justice, I cannot find. In fact, unfortunately for me, what I
28 can find is that the court that I practice in, has 34 judges today, of whom not one is a Promotee.
29 So, for me to come to that conclusion...

- 1 **CHIEF JUSTICE B.R. GAVAI:** Which court?
- 2 **GOPAL SANKARANARAYANAN:** This court.
- 3 **CHIEF JUSTICE B.R. GAVAI:** No Promotee Judges?
- 4 **GOPAL SANKARANARAYANAN:** So, all 34 of Your Lordships...
- 5 **JUSTICE K. VINOD CHANDRAN:** I was begging the question.
- 6 **GOPAL SANKARANARAYANAN:** No, as far as I'm concerned, I find that frightfully
7 efficient, but I don't know, would this picture have been different if there were 34 others. I
8 can't answer that, but I'm saying today this court doesn't have a data point as far as they are
9 concerned.
- 10 **CHIEF JUSTICE B.R. GAVAI:** Five of us sitting this side...
- 11 **GOPAL SANKARANARAYANAN:** Yes, My Lords.
- 12 **CHIEF JUSTICE B.R. GAVAI:** Are having experience of nine High Courts.
- 13 **GOPAL SANKARANARAYANAN:** That's true, that's exactly... That, in fact, supports
14 what...
- 15 **VIBHA DATTA MAKHIJA:** We have two Chief Justices who have come from the
16 community. We had two Chief Justices here who have come through the service [UNCLEAR].
- 17 **CHIEF JUSTICE B.R. GAVAI:** There are many Judges here. Justice Mudholkar, Justice
18 Palkar...
- 19 **GOPAL SANKARANARAYANAN:** There's no doubt. But I'm saying... are we to
20 presume...?
- 21 **CHIEF JUSTICE B.R. GAVAI:** We are not going on a... we are not basically going on a
22 dispute between a Direct Recruit and Promotee.
- 23 **GOPAL SANKARANARAYANAN:** Correct.
- 24 **CHIEF JUSTICE B.R. GAVAI:** We are only trying to find out what should be the best
25 system in order to enhance the efficiency of the administration of justice.

1 **GOPAL SANKARANARAYANAN:** Yes. So this is a continuing effort. It's always going to
2 be a continuing effort based on [UNCLEAR] experiences.

3 **CHIEF JUSTICE B.R. GAVAI:** *All India Judges* has been doing it continuously

4 **GOPAL SANKARANARAYANAN:** Correct. That's why it's been going on so long.

5 **CHIEF JUSTICE B.R. GAVAI:** And it's a question of trial and errors. But what this court
6 found correct in 2002...

7 **GOPAL SANKARANARAYANAN:** Yes.

8 **CHIEF JUSTICE B.R. GAVAI:** ...was required to be changed in 2010 and after 15 years,
9 this Court again finds that it is...

10 **GOPAL SANKARANARAYANAN:** That is true. Far be it for me to say, but whatever
11 judgement comes from here, I'm sure there could be a revisiting based on what other
12 experiences we have after five or ten years. So, my only suggestion is this, because the
13 Constitution of five judges in this continuing exercise, I don't believe is going to be common. I
14 think it's a rarity. It's the first time it's happened here. So, if Your Lordships were to lay down
15 any principle, that principle I think, should be based on two things. One that we have enough
16 data, and we have some material on the basis of which we believe that there is some problem
17 that we need to address. I am fighting to see where that problem is. What is the problem here,
18 right now, today?

19 **CHIEF JUSTICE B.R. GAVAI:** Because you have practiced only in this court.

20 **GOPAL SANKARANARAYANAN:** I don't see that as a problem. I don't see that problem.
21 I've gone on record, I've gone on record arguably to say that the lack of women in the Supreme
22 Court on the Bench is a problem. I see that as a problem. The lack of Promotees, I am not
23 seeing this as a problem. I'm not seeing it there, I'm not seeing it here. I don't see it anywhere.
24 So, if there is, there has to be data and material to start with. That's point 1. Point 2, if we look
25 at it as far as the law is concerned, there was three judgements. I'm sorry. I think Mr.
26 Bhatnagar didn't have enough time to place that fully before, Your Lordship. But those initial
27 two, which are the ones which I've referred to at page 2 of my note, *Mervyn Coutindo* and
28 *Roshan Lal Tandon* on facts because I know My Lord, the Chief Justice has had some
29 misgiving about lawyers in this court only showing strands of paragraphs.

30 **CHIEF JUSTICE B.R. GAVAI:** I still hold that opinion.

1 **GOPAL SANKARANARAYANAN:** My Lords, if when we fight with tight timelines like this,
2 when we are given 20 minutes, very difficult for us to show full facts and everything. But I'm
3 just trying to tell you what the context is of these three judgements.

4 **CHIEF JUSTICE B.R. GAVAI:** In the matters which have been argued for days and days.
5 Also, we have... At least both of us have... when we are sharing the weight we have received the
6 same thing.

7 **GOPAL SANKARANARAYANAN:** That is correct. I hope I will not be guilty of that. So,
8 *Mervyn Coutindo* and *Roshan Lal*...

9 **CHIEF JUSTICE B.R. GAVAI:** I will make attempt to take the opinion of others because I
10 have hardly now any days left with [UNCLEAR].

11 **GOPAL SANKARANARAYANAN:** These impressions shouldn't rest with... It pains me
12 every time I hear judges of this court, including judges who come from the Bar saying Supreme
13 Court lawyers, you do this or that. I believe that we have to hold up the highest standards of
14 advocacy in this country. And if we are falling short, then we must correct ourselves. And I do
15 not want Your Lordships to leave with the impression that we have not placed the full facts of
16 cases before you. *Mervyn Coutindo* and *Roshan Lal Tandon* are very squarely on the
17 point that is sought to be addressed here, which is effectively of creating a cadre within a cadre,
18 which is the way Justice Bagchi had put it on the first day. It is precisely that, in *Coutindo's*
19 case, in both those cases, both the constitution benches had framed two issues, and in both
20 those cases, they answered one issue in favour of the petitioners and the other issue against
21 the petitioners. And in both those cases, the issue they answered in favour of the petitioners is
22 the one that I'm relying on now. I'm just breaking it down quickly because I want to reduce my
23 time so that others can argue. In *Mervyn Coutindo*, it was dealing with principal appraisers
24 within the Customs Department. It is and this may answer one of the questions that My Lord
25 Justice Surya Kant also put, roster did it really arise in the background of reservation of SC's,
26 ST's, OBC's to try and fit them all with some level of fairness. I have found, in fact, the first
27 office memorandum copies. This is a 1959 office memorandum of the Government which dealt
28 with, in fact, Burmese civil servants were brought into our civil service, et cetera. So, with
29 reference to all of them, they dealt with and introduced the roster. Subsequently became a 40-
30 point roster and that's the one that is dealt with in *Indra Sawhney*, *Sabharwal*, etc as the
31 one that has to be adopted, and it's not in the context of 15, 16 reservations. It's in the context,
32 effectively, if Your Lordships will see, just there's one paragraph from that I just wanted to
33 read to Your Lordships, which is at page 5. The explanatory memorandum at the end. Just see
34 General Principle 6. General Principle 6 at page 5. Your Lordships have that?

1 **CHIEF JUSTICE B.R. GAVAI:** Yes, seniority.

2 **GOPAL SANKARANARAYANAN:** "A roster should be maintained based on the
3 reservation for direct recruitment and promotion in the recruitment rules, where the
4 reservation for each method is 50%, the roster will run as follows. One promotion, two direct
5 recruitment, three promotion, four direct recruitments, and so on. Appointment should be
6 made in accordance with the roster and seniority determined accordingly." Now this is, I'm
7 not troubling Your Lordships further with this. But this is where the genesis of this roster idea
8 and its implementation started thereafter. Now this question came up in *Mervyn Coutindo*
9 on roster specifically, and not once again in the context of reservations. They specifically said
10 that we believe that roster causes discrimination and therefore, please don't have roster.
11 *Mervyn Coutindo's* case, it's there in my note, Your Lordships may just note that this was
12 the argument that was taken.

13 And at page 5, I'll just read this out. It's from that volume, which is in the footnote Volume V-
14 A, V-A is where the judgment is. At the bottom of page 5, referring to this very circular which
15 I've handed to Your Lordships. They say "this brings us back to the circular of 1959. And the
16 main question in that connection is the meaning to be assigned to the words seniority
17 determined accordingly in the explanation to Principle 6 relating to relative seniority of direct
18 recruits and Promotees. As we read these words the plain meaning is that seniority is between
19 direct recruits and Promotees should be determined in accordance with the roster which has
20 also been specified. Namely one Promotee, followed by one direct recruit and so on. Where
21 therefore, recruitment to a cadre is from two sources, namely direct recruits and Promotees
22 and rotational system is enforced. Seniority has to be fixed as provided in the explanation, by
23 alternately fixing a Promotee and a direct recruit in the seniority list. We do not see any
24 violation of the principle of equality of opportunity enshrined in Article 16 by following the
25 rotational system of fixing seniority in the cadre, half of which consists of direct recruits, and
26 the other half of Promotees."

27 Now My Lords, if Your Lordships were to come to page 7, which is the next page. So they say
28 that there are two levels that they're looking at, the Appraisers and the Principal Appraisers.
29 In appraisers, they said there is no problem with having this kind of a process system. The
30 second issue, which they consider is its application, when you have two sources of recruitment,
31 one from promotion, the other from direct recruitment, which is exactly what we are saying
32 here. That once you come into this cadre of District Judges there's no question of looking at
33 what they were previously. So page 7, brings, in the middle of the paragraph, dealing with the
34 second issue. "This brings us to the question of Principal Appraisers. We are of opinion that
35 the petitioners have a legitimate grievance in this respect. The source of recruitment of

1 Principal Appraisers is one, namely from the grade of appraisers," here District Judges. "There
2 is therefore, no question of any quota being reserved from two sources in their cases. The
3 rotational system cannot, therefore, apply when there is only one source of recruitment and
4 not two sources of recruitment. In a case, therefore, where there is only one source of
5 recruitment, the normal rule will apply, namely, that a person promoted to a higher grade gets
6 a seniority in that grade according to the date of promotion, subject always, to his being found
7 fit and being confirmed in the higher grade after the period of promotion is over."

8 I'll just skip two lines. "Insofar therefore, as the Respondent is doing what it calls restoration
9 of seniority of direct recruits and appraiser's grade, when they are promoted to the Principal
10 Appraiser's grade, it is clearly denying equality of opportunity to the appraisers, which is the
11 only source of recruitment of the Principal Appraiser's grade. There is only one source from
12 which the Principal Appraisers are drawn, namely, appraisers. The promotion being by
13 selection and five years' experience as the appraiser is the minimum qualification." This
14 judgement, **Mervyn Coutindo** is followed squarely by the Constitution Bench again in
15 **Roshan Lal Tandon**. In **Roshan Lal Tandon**, they were dealing with Examiners within
16 the Railway Board. And there My Lords, it was dealing with promotion from grade D to grade
17 C of Train Examiners. And they said, "once again, you form one single class." That is at page
18 16 of the same volume is the findings regarding that. There again two issues came. This issue
19 decided, effectively in our favour, our argument's favour. **Triloki Nath** was dealing with the
20 Engineering Service of Jammu and Kashmir. Much has been placed on the reliance there. And
21 there, they were dealing with Assistant Engineers and whether they had a degree or a diploma.
22 As Mr. Bhushan rightly said, this could come from either of the sources, so it really makes no
23 difference. Secondly, **Triloki Nath** was referred to in **Davinder Singh**, the seven judges
24 bench. **Davinder Singh** is a judgement which had six separate judgements in it. One was a
25 dissenting judgement of Justice Trivedi, the other, including My Lords, Justice Nath, Justice
26 Gavai, all were in the majority. But, we have to read each of those judgements to make sure
27 that what was said about **Triloki Nath** was accepted by the others. Justice Chandrachud
28 writing for Justice Mishra as well, makes the comment that, **Triloki Nath** is a law, and good
29 law, and the leading law, on the proposition that, once you are in a cadre, if you have to look
30 at special educational qualifications that could be a factor for the purpose that you're seeking
31 to achieve. In **Triloki Nath**, it was a question of Examiners having a specific skill and a
32 qualification that was required for the purposes of the work that they had to do in Jammu and
33 Kashmir.

34 The proposition that is formulated by Chief Justice Chandrachud, is not one that is at all found
35 in any of the other judgements. In fact, My Lord Justice Gavai follows **N. M. Thomas** which
36 says that **Triloki Nath** does not apply. The paragraph is extracted where **Triloki Nath** does

1 not apply to the facts of that case is specifically said. So, to say that **Davinder Singh** seven
2 judges bench has followed and adopted **Triloki Nath**, is not a correct reading of ratios of
3 judgements. That's not the way it goes. None of the other judgements agree with this on this
4 proposition. Therefore, **Davinder**, if at all, is saying it as an *obiter*, because it is not dealing
5 with that issue. **Davinder** was looking at the **Chinnaiah** issue

6 **CHIEF JUSTICE B.R. GAVAI:** **Davinder** is basically dealing with sub-classification?

7 **GOPAL SANKARANARAYANAN:** Sub-classification, that's all it was. So, this has no
8 rationale and no connection with that at all. If at all, it's *obiter*, to that extent. In any event, I
9 don't think **Triloki** does any violence as far as we are concerned. My Lords, I have mentioned
10 there are multiple options which are available and Your Lordships have been responsible for
11 ensuring that as far as any possible heartburn could be there, because if, as far as the
12 Promotees are concerned, there is heartburn, as recently as in your recent Constitution Bench,
13 Your Lordships have already addressed that. If you see page 1 of my note, I've extracted that
14 paragraph. Just let me read that out to you in this **Rejanish vs. Deepa** delivered last month.

15 Your Lordship say at para 159 and if I can read that. It's extracted at page 1 of my note. "Insofar
16 as the contention regarding the heartburn amongst the Judicial Officers in a situation where
17 a junior gets promoted before the senior is concerned, in our view the said contention is
18 without any merit. The in-service candidates, though junior, will have to compete before being
19 selected with the advocates as also their seniors, who also will be qualified, and only
20 meritorious candidates would be selected and appointed. If a person is meritorious and on
21 account of merit, and merit alone gets selected directly as a District Judge, there can be no
22 question of heartburn for those who are not as meritorious as the person selected."

23 Keeping that in mind My Lords, now consider the four measures that are in place as far as
24 these Promotees are concerned. The first is that there's a 25% quota LDCE exam, which is
25 available, so, they can participate and speed up the process. The second is the 40-point roster
26 system. This is at page 3 of my note. I have listed it there. 40-point roster system. So the roster,
27 if it's properly applied; if it's not properly applied, there's a problem. My suggestion is after
28 this judgement is done, please just supervise it just like you've done in **Prakash Singh** with
29 the police reforms where all the States have to come and show that they are towing the line in
30 terms of Article 144 of the Constitution. Let the States and the High Courts come here and
31 show what they're doing on the roster. If that's not being done, if LDCE is not being conducted,
32 they have to answer to it because there's a direction of this Court. They have to follow it.

1 The third is where you have reduced the minimum experience required for LDCE from 10 to
2 seven years. Fourth, now in **Rejanish** you have opened it up for them to participate. So today,
3 in the 50%, in the 25%, and in the 25%, they have all three avenues available to them. The
4 direct recruits have only the 25%. They have all three. All 100% is available to them. You could
5 have a situation, all 100% are full of Promotees. You could have that. It's possible.

6 And My Lords, the question that I believe should be framed is the one at 3.2, when we look at
7 what is the issue here. "The question is not do both Promotees and direct recruits have equal
8 opportunities to seniority in the District Judge cadre. The question is, is the service of justice
9 premised on the mode of recruitment of judges." It's in my view it's the second question that's
10 the one that has to be looked at.

11 Finally, just this one judgement that Your Lordships drew our attention to, which is there in
12 the Amicus is on **Jagannath**. The distinction is that in **Jagannath** there were a single cadre
13 to start with. The cadre was then split up. They were split up, as they were known as
14 Compositors and the Compositors had clerical work to do based on skills, and they said that
15 the Compositors were splitting into Grade 1 and Grade 2, and those were put in Grade 2 were
16 put in Grade 2 because they had lesser length of service. So those people objected saying when
17 you're splitting us up, you can't do that because we have the same levels of... same type of
18 experience. They said, no, we're looking at skillsets, and therefore this division is permissible.
19 That's not the question that arises here. We didn't start as a common pool; we became a
20 common pool. And once we are a common pool, you can't split us up. So, it's the exact
21 converse. I'm grateful, My Lords. I'm most grateful.

22 **RAJIV SHAKDHER:** With Your Lordship's permission I like to appear for the direct recruits
23 of the UP Judicial Services, and my I.A. No. is 269748 of 2025 and my written submissions
24 are in Volume II, R.3, My Lord. R.3. And page number 6 of... My Lords has that, Honourable
25 Chief Justice? My Lord I won't trouble too much because there are two other people to follow
26 but I can only say this. My Lord, I'm looking at the watch. I can only say this, that insofar as
27 this side is concerned, the common consensus and Your Lordships have heard it again and
28 again is that the roster system is a good system. Whether Your Lordships finally accept it or
29 not is another aspect. The second aspect which emerges, My Lord, after hearing submissions
30 of counsel from this side and that side is sometimes it breaks. And as My Lord Justice Surya
31 Kant, and Honourable Chief Justice said, when it breaks what happens? Your Lordships have
32 repeatedly said, if it becomes impractical, then you need not follow the roster system. Insofar
33 as UP is concerned, My Lord, the figures. In fact, if Your Lordship would see for Your
34 Lordship's convenience at page 10. It's only for Your Lordship's convenience My Lord. We've

1 taken the data from the Amicus' brief, My Lord. And Your Lordships would see 5.1. Mr. Bagchi
2 has it, My Lord?

3 **JUSTICE JOYMALYA BAGCHI:** Yes.

4 **RAJIV SHAKDHER:** My Lord, if Your Lordship would see serial numbers in that first table
5 1 to 9 except for Rajasthan and Arunachal Pradesh, in every case, Promotee judge they are
6 more, sufficiently more. Similarly, My Lord, 5.2, again, the ratio is higher. And at page 12 again
7 My Lord, except for Bihar and Himachal. In fact, Himachal is very close. Serial No. 11, 4 and
8 3. Bihar there is this huge dishonest suite, so to say, My Lord. 86 and 5. Five Promotee and
9 eight direct recruits. But rest it seems the Promotees have a healthy number. In fact, My Lord
10 in Kerala, Justice Chandrachud wrote that. And if I'm not wrong, please correct me My Lord.
11 At the foot of that table at page 12, it says. My Lord, para 7 of the Affidavit. And this is from
12 the Affidavit "of the 48 principal District Judges of the last five years 30 are Promotee." My
13 Lord has it? Page 12 at the foot of the page, My Lord. 30 are Promotees, these are High Court
14 judges, and eight are direct recruits. So, there is a healthy number in the constitutional court
15 also. Of course, later on, I think the position today is out of 42 it is now 10 directly recruited
16 and five Promotee judges. Now insofar as Allahabad is concerned My Lord, and that's why I
17 want My Lords to see that judgement when it breaks down what happens. When Your
18 Lordships passed the judgment in 2002, the **AIJA** judgement. Your Lordship said go via the
19 roster system. In Allahabad My Lord, till 2007 My Lord, no corrective measures were taken,
20 and in 2009 the rules were amended with the result My Lord, in 2007 and '09 My Lord, there
21 were no vacancies filled and it broke down. Your Lordships in **Allahabad High Court vs.**
22 **State of UP** My Lord, and para 12, if Your Lordship would see. My Lord, para 11 is a citation
23 of my written submissions. That's the... It is important My Lord to keep this judgement in
24 mind because it covers a whole lot of precedents. And in paragraph 12 My Lord, the court
25 frames two questions. Page 15 is paragraph 30. I would just want to read that very quickly.
26 With regard to the quota rule, page 15 My Lord, para 30 of the judgement of the 2018
27 judgement, which applied specifically to the Allahabad High Court. "With regard to the quota
28 rule, there is no doubt that there is mandatory requirement of the rules." My Lord, has it?

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

30 **RAJIV SHAKDHER:** "The said requirement was, however, to be seen in peculiar fact
31 situation. The issue of determination of vacancies was embroiled in continuous litigation. This
32 was between 2002 and 2007; the quota rule could not be applied in the absence of
33 determination of vacancies. The suitability test, though validly laid down, could not be held
34 till 2008 for reasons already noted. No promotion could be given in the absence of suitability

1 test." My Lord this was for the Promotees. Because under 2002 judgement, they had to have a
2 suitability test. And then My Lord, Your Lordships go on to say "the rule provided for seniority
3 of the Promotees to be fixed from the date of availability of vacancy, but such seniority could
4 also not be given in the present fact situation. If the rota rule is applied, it will work serious
5 prejudice to the Promotees. Thus, the rules will have to be given up pragmatic interpretation
6 as laid down by this court." My Lord, in an earlier judgment it's a well-known direct recruit
7 case. "If it becomes impractical to act upon the rule fixing quota from two sources, it is no use
8 insisting that the authority must be given effect to such rule. Every effort has to be made to
9 respect a rule, but it's not feasible to enforce it. The rule has to be given practical interpretation.
10 Thus, interference by the High Court with the seniority given to the Promotees above the direct
11 recruits without following the rotation principle cannot be sustained."

12 Now My Lord, this judgement considered previous precedents, which is why I'm not labouring
13 that point. **O. P. Garg, Srikant Tripathi** and **Ashok Pal Singh**. My Lord, the sum and in
14 **Ranvir** My Lord, in 2021, the court sustained this principle, that is, you have to go by the
15 roster system. If it breaks down, then you have to file a practical solution. Now My Lord, in
16 sum and substance, therefore My Lord, as I started by saying, that the roster system is not
17 perfect. It's something like democracy we say My Lord. It's not the best system, but the others
18 may be worse, one. Two, My Lord, since Your Lordships have taken, and I don't want to repeat,
19 three major steps, which is entry...

20 **CHIEF JUSTICE B.R. GAVAI:** That has been argued at least [UNCLEAR].

21 **RAJIV SHAKDHER:** No. Correct. I'm sorry. I'll just conclude by one thing. Why did the
22 entry level experience come? And this is what I want My Lord, the Chief Justice to consider.
23 Your Lordship knows, that there is the NCMS, the National Court Management System. My
24 Lord, the committee called for empirical data, and Your Lordships notice that majority of the
25 High Court said, that there has to be some experience. The question was one, two or three
26 years? Some said two years, because they said there is judicial training. Some said three.
27 Ultimately, Your Lordships decided one way or the other, three years. The other is about LDCE
28 quota and then the **Rejanish**, My Lord. My respectful submission is My Lord, there has to be
29 impact assessment, one. Two My Lord, an observation that fell from one of Your Lords, My
30 Lord is, diversity is an important aspect, My Lord. You cannot just say that I must have only
31 in...

32 **CHIEF JUSTICE B.R. GAVAI:** Nobody is against diversity.

33 **RAJIV SHAKDHER:** Yes, My Lord.

1 **CHIEF JUSTICE B.R. GAVAI:** On the contrary, the argument is that, there has to be
2 representation to all.

3 **RAJIV SHAKDHER:** I'm deeply obliged. I'm only saying, therefore...

4 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR].

5 **RAJIV SHAKDHER:** No, I'm just trying to link it to my first submission, My Lord.
6 Therefore, if the system is not broken, it's my respectful submission, My Lord, please continue
7 with it. See how it plays out, your initiatives, My Lord, the Chief Justice, under your leadership,
8 those three judgements are written. Please see how it works out and as My Lord, the saying
9 goes, if it's not broken, let's not try and fix it. Because we are trying to fix some...

10 **CHIEF JUSTICE B.R. GAVAI:** That was advanced by the learned Attorney General
11 yesterday. By replying to the validity argument that challenge the validity of the rules, the
12 Tribunal's rules, that the system should be permitted to work for some time, and then the
13 courts should decide about the validity of that.

14 **RAJIV SHAKDHER:** Yes, sometimes My Lord, it is right. Even for law, we do constantly.
15 The last thing that I want to say, an observation which Your Lords made My Lord, let's have
16 guidelines. The difficulty with guidelines is, and this is some amount of, any word from My
17 Lords, My Lord, no Chief Justice is going to cross it and should not. Because, there has to be
18 judicial hierarchy. Once Your Lordships even makes an observation, I don't think the Chief
19 Justices will be able to cross that. So, therefore, the danger in saying that, we'll say guidelines
20 with discretion, may not work. That's my respectful submission. Your Lordship may consider
21 it.

22 **CHIEF JUSTICE B.R. GAVAI:** You're adopting Mr. Rakesh Dwivedi's argument as per
23 doctrine.

24 **RAJIV SHAKDHER:** Sorry, My Lord?

25 **CHIEF JUSTICE B.R. GAVAI:** You're adopting his arguments, Mr. Dwivedi's arguments?

26 **RAJIV SHAKDHER:** No, I'm not...

27 **CHIEF JUSTICE B.R. GAVAI:** Hands off.

28 **RAJIV SHAKDHER:** No, I am not going that far. I am only saying My Lord, in a judicial
29 hierarchy and correctly, if Your Lordship says something, they ought not to. It'll bind them.

1 They will not be able to use discretion. How Your Lordships are going to mould it, it's up to
2 My Lords, My Lord.

3 **CHIEF JUSTICE B.R. GAVAI:** Thank you.

4 **DEVASHISH BHARUKA:** My Lords, I appear for the Direct Recruittee Judges from
5 Maharashtra, State of Maharashtra. My submission is threefold and quickly I'll do it in twelve
6 minutes. (1) What My Lords have always encouraged is an equality of opportunity, when right
7 from 2002 when My Lords had introduced LDCE. Now Shetty Commission, at that point of
8 time, the only way out was promotion, so they suggested, one, was weightage and another was
9 LDCE. What My Lords did was, came up with a clean scheme. Paragraph 27 to 30, in my
10 humble submission, is a complete scheme. 29 may not be just taken independently. 27, 28, 29,
11 and 30 is where Your Lordship first introduced LDCE, for the purposes of granting equal
12 opportunity, a better opportunity to those, who otherwise were not able to have an accelerated
13 growth in their career progression. And therefore, in that context, My Lords, what, Your
14 Lordship, I just read three lines of paragraph 27. What My Lords had indicated was,
15 "furthermore, there should also be an incentive amongst the relatively junior and other officers
16 to improve and to compete with each other so as to excel and get quicker promotion." So My
17 Lords, number one, had taken this into consideration for the purposes of benefits of those
18 junior officers, who never had the occasion of otherwise moving forward in a fast track. These
19 three lines, My Lords, have repeatedly been followed by Your Lordships in 2022, 2025 and the
20 recent, in *Rejanish* judgement. Then in paragraph 29, My Lords created a link between these
21 two; I'll just read again a few lines. "As a result of the decision today there will, in a way, be
22 three ways of recruitment of higher judicial service. The quota of promotion which we have
23 prescribed is 50% by following the principle merit cum seniority, 25% strictly on merit by
24 Limited Departmental Competitive Examination and 25% by direct recruitment. Experience
25 has also shown that the least amount of litigation in the country where quota is in..."

26 **CHIEF JUSTICE B.R. GAVAI:** That is already...

27 **DEVASHISH BHARUKA:** Yes, My Lord. So I'm connecting all this, that the roster system
28 Your Lordship had adopted keeping in mind Your Lordship is also offering an alternative of
29 LDCE at that point of time, which today, My Lords, with Your Lordship's recent judgment, has
30 now additional District Judges directly, in *Rejanish*. So my summation of this really, My
31 Lords have always been encouraging meritorious candidates who now have the option. Now
32 with the informed decision, somebody takes an option that either I'll continue as a service and
33 go the promotion route, or I take an informed decision...

1 **CHIEF JUSTICE B.R. GAVAI:** That has already been argued.

2 **DEVASHISH BHARUKA:** My Lords, I understand. I'm only saying My Lords, two
3 applicants My Lords before Your Lordship in this application, they had, considering this
4 particular judgement of 2002, they had designed at Civil Judges, practiced and thereafter they
5 had then given the exam for District Judge. So there are situations, My Lords, where people
6 have actually made a conscious choice in terms of what is available and then move forward. So
7 that is the first submission My Lords.

8 **CHIEF JUSTICE B.R. GAVAI:** [UNCLEAR].

9 **DEVASHISH BHARUKA:** As regards the Shetty report, My Lords, what my learned Amicus
10 had been relying on was the age group and the age gap. My submission is the Shetty
11 Commission data is today two and a half decades old, and therefore My Lords may consider
12 not relying upon that data for the purposes of laying down a policy for the next decade.

13 **CHIEF JUSTICE B.R. GAVAI:** We are not relying upon that. We are relying on the data
14 which is supplied by the learned Amicus.

15 **DEVASHISH BHARUKA:** I'm grateful My Lord. So on that basis may I just submit for
16 Lordships' considerations. I've just compiled the data which was available on the record to my
17 best of my capacity, in terms of what is the age difference which is really happening today in
18 terms of what...

19 **CHIEF JUSTICE B.R. GAVAI:** Amicus has given on the basis of the affidavits of the...

20 **DEVASHISH BHARUKA:** My Lords, I have taken that affidavits only to indicate, Your
21 Lordships. And I have put that in the Annexure that wherever the data is available My Lords
22 and it is part of my written submissions, out of 11 states where the data of 99 and the data of
23 25 is available My Lords, in eight states the age difference is actually reduced. So my only
24 submission is considering that Your Lordships have introduced LDCE in 2002, and now in
25 ***Rejanish*** Your Lordship has created another third possibility, the possibility of having the
26 age difference being reduced in the long term is something which is quite will be there, My
27 Lords and therefore Lordship may consider having and continuing with this roster system for
28 the purposes of this seniority. Also there was one word in terms of eight changes My Lords.
29 Again, a calculation which we have done My Lords in terms of after ***Rejanish***, what would
30 happen. So far as Civil Judges are concerned My Lords, he would, at least by promotion,
31 probably if we take 23 years as the age of entry as a Civil Judge My Lords, he will probably
32 require 13 years to reach the age of District Judge. But My Lords if the Civil Judge can become

1 eventually a District Judge through the LDCE route, he would have probably only a minimum
2 of 10 years would be required. Similarly, My Lords an in-service...

3 **CHIEF JUSTICE B.R. GAVAI:** Calculations have been given by [UNCLEAR].

4 **DEVASHISH BHARUKA:** So, I'm just saying, today the age gap is not only reduced in terms
5 of whatever data is moved on from Shetty Commission today, whatever is available on record.
6 The possibility of actually having some kind of a parity between these two groups is quite high,
7 considering that Your Lordships have now, with this judgement in *Rejanish* and in the
8 judgement of *AJJA* in 2025 and only to 2002, My Lords have ensured that there are multiple
9 options available to these in-service candidates as well. And therefore, to that extent, My
10 Lords, my submission would be that so far this roster system is concerned, that may be
11 continued. Also My Lords just one last word. The gradation list which has been relied upon
12 My Lords, Your Lordship has already seen. The gradation list may differ from year to year in
13 a state, and it may not even be reformed between different states and the reason would be in
14 terms of that, Your Lordship's directions in *Mazhar Malik* may not have been followed to
15 the requirement in terms of what the period of and the requirement of recruitment policy is.
16 If that is tend to hold My Lords, probably there is also a possibility that this entire roster
17 system would not require to be changed. That is my limited submission. Grateful.

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

19 **ASHOK GAUR:** Your Lordships, I appear in this I.A. number 258354 filed on behalf of the
20 direct recruitees of the Rajasthan State Judicial Service. My Lord, I have fivefold submissions.
21 In a nutshell, I know the time constraint, and because Lordship has fixed five. My Lord, the
22 first thing I'll submit to Your Lordship, is the Amicus has raised grievance that My Lord, those
23 people who come from the Civil Judge cadre, they don't reach up to the level of Principal
24 District Judge. My Lord, my first submission is, My Lord Principal District Judge is a posting.
25 It's not a cadre, My Lord...

26 **CHIEF JUSTICE B.R. GAVAI:** That's already argued.

27 **ASHOK GAUR:** No, this is what I'm saying, My Lord. Because My Lord, now all High Courts,
28 My Lord under Article 233, My Lord they have got power of not only recruitment, but a posting
29 also. So, My Lord, anybody who's posted as My Lord District Judge, My Lord that depends on
30 not only on seniority, on acumen and other considerations which High Court feels My Lord.
31 My Lord, because all the District Judges, including principal DJ My Lord, they discharge the
32 same judicial function. It is only administrative powers which are given to Principal District
33 Judge in the maybe the transfer of staff or giving particular cases. So My Lord, what I'm saying

1 that this functional responsibility of Principal District Judge will not definitely confirm with
2 any extra judicial power by which he can say that I have been deprived from this assignment.
3 So My Lord, my first submission would be that Lordship has to consider whether this
4 grievance can be raised by people who have been indicted in service, knowing fully well that
5 we have joined the ladder as a Civil Judge at a young age and My Lord, this has not been
6 projected before this court that these people first they become senior Civil Judge, they become
7 ACJM, then they become CJM, then they become ADJ. My Lord, they are going in the ladder
8 and the ultimately My Lord, they come to the cadre of District Judge. So, My Lord, to say this
9 by Amicus, that we have been deprived of this principal DJ with utmost My Lord humility at
10 my command, I'll say this is absolutely unfounded. This is adding a new My Lord, absolutely
11 angle to the service jurisprudence by saying that for principal DJ there has to be some quota
12 reservation.

13 My Lord, my second submission would be, My Lord that this quota rota system, which has
14 been introduced by virtue of judgement of this court, My Lord, that has been followed by most
15 of the High Courts. My Lord, I know about Rajasthan High Court, rules also I have placed on
16 record. My Lord, now there's a system of assigning senior to them. That first three slot will go
17 to the Promotees. The fourth will go to direct recruitee. My Lord, this ensures that My Lord
18 these Promotees they get their due and the direct recruitees do not march over these people.
19 Now My Lord, third thing, the one, My Lord, fear, which was arrayed by Ms. Makhija probably,
20 My Lord, she said that those people, by merit, of course, are now... these people can come by
21 all three by judgment, by Your Lordships, My Lord. I'll not repeat that. So, My Lord now, once
22 they come in limited...

23 **CHIEF JUSTICE B.R. GAVAI:** We have already... when she was arguing, we have already
24 openly said what was in our mind with regard to her argument.

25 **ASHOK GAUR:** No, no. What I'm saying My Lord, one aspect has not been pointed out. My
26 Lord these limited competitive examination people who appear civil judges how they are
27 seniority to be reckoned? It was said that in the lower cadre whatever seniority was there, they
28 are merited diminishes My Lord. There's a judgment of this court. My Lord, this is ***Dinesh***
29 ***Kumar Gupta vs. High Court of Rajasthan***, My Lord. This is **2020, Volume 19, SCC**
30 page 604. I had requested the court master to give it because I couldn't get the copy. This
31 answers the particular fear of these people who come in the competitive examination. My
32 Lord, I'll refer to the issue, and then I'll give the answer to that which will be given by this
33 court. My Lord, there are issues which are at page 607. Please turn to page 607, My Lord.
34 Directly to the issue, My Lord. At 607 My Lord, (iv) is the issue. Your Lordship has that?
35 "Whether the *inter se* placement of candidates selected to the cadre of district judge in the

1 State through limited competitive examination in the seniority list must be based on their
2 merit in the said examination or should it be based on their initial seniority in the erstwhile
3 cadre?"

4 Now My Lord, please turn to the answer which has been given in this case. I'll refer to para 49
5 and 50, My Lord. Your Lordships would find para 49 at page 666, My Lord. Please turn to para
6 49 and 50. Para 49 starts, My Lord, I see behind Your Lordships, My Lord. Can I continue My
7 Lord? I'll need 5-10 minutes.

8 **CHIEF JUSTICE B.R. GAVAI:** We can't be unfair to them also. We have given you half an
9 hour more than what we had given to them.

10 **ASHOK GAUR:** Taken two minutes My Lord. Give me five minutes more, I think two and
11 three are more left from our side.

12 **CHIEF JUSTICE B.R. GAVAI:** Mr. Singh is also there.

13 **ASHOK GAUR:** Mr. Sanghi is there.

14 **VIPIN SANGHI:** And I am from Madhya Pradesh. I'll not take more than ten minutes.

15 **CHIEF JUSTICE B.R. GAVAI:** Not ten minutes. All of you have five minutes each.

16 **ASHOK GAUR:** All right My Lord. We'll... Yes, My Lord.

17 **CHIEF JUSTICE B.R. GAVAI:** I will grant you 20 minutes, and about half an hour to the
18 learned Amicus.

19 **SIDDHARTH BHATNAGAR:** Please. I'll take less than that, but whatever.

20 **CHIEF JUSTICE B.R. GAVAI:** If Mr. Dwivedi wants to add something.

21 **VIBHA DATTA MAKHIJA:** I'll take two minutes after the Amicus.

22 **CHIEF JUSTICE B.R. GAVAI:** But follow the timelines.

23 **ASHOK GAUR:** After the break, My Lord?

24 **CHIEF JUSTICE B.R. GAVAI:** After... at 02:00, I will give five-five minutes to each.

25 **ASHOK GAUR:** Lordship.

1 **CHIEF JUSTICE B.R. GAVAI:** Yes, Mr. Gaur.

2 **ASHOK GAUR:** My Lord, to ally the bears of, My Lord, limited competitive examination
3 candidates, this Court has answered.

4 **CHIEF JUSTICE B.R. GAVAI:** We are not on that. We are not going to...

5 **ASHOK GAUR:** No, what I'm saying, My Lord, that this issue that now recently Your
6 Lordship had also decided that the judgment *Rejanish* that these people will also have entry
7 in direct recruitment quota. So, My Lord, this law laid on by this Court takes care of now both
8 the issues that whatever seniority they had in the earlier cadre that goes and whatever merit
9 they had in the competitive examination, they'll get their placement, My Lord. So, My Lord,
10 my submission is that, My Lord, to recognize the merit of these civil judges there's enough care
11 which has been taken by this Court so far. And ultimately, once they come in the cadre then
12 they cannot say that we should have a separate quota. My Lord, that's my second submission
13 below.

14 My Lord, my third submission is, these people who come from JMFC, as I have filed my IA, in
15 Rajasthan there are 12 honourable judges who have been elevated to the Bench. My Lord, out
16 of 12, 11 are from this JMFC. Only one Honourable Judge has come from other state, he was
17 direct recruitee, Mr. Munnuri Laxman probably. So, My Lord, now to say this, that they have
18 been suffering because of this, this is also incorrect. My Lord, I've also find a list where in last
19 10 years there have been 287 postings as a Principal District Judge in Rajasthan. My Lord,
20 these people are 227, only 60 direct entries have come in, in last 10, 12, 15 years rather, from
21 '10 onwards. That list is there, My Lord, I have filed it as Annexure R-2 in Volume this thing.

22 Now, so, My Lord, to say this that it has been a cause of heart burning or it has been a cause of
23 loss after joining as a Civil Judge, My Lord, this is absolutely unfounded. My Lord, my next
24 submission is that the prayer which is being made by the Amicus is about weightage to be given
25 that has already been turned down by this Court.

26 **CHIEF JUSTICE B.R. GAVAI:** That's been argued.

27 **ASHOK GAUR:** I'm not repeating that, My Lord. Last but not the least...

28 **CHIEF JUSTICE B.R. GAVAI:** You are not repeating. You are saying that you are not
29 repeating. You are doing the same thing.

1 **ASHOK GAUR:** No, My Lord. In one sentence I completed. My Lord, last but not the least.
2 The entire application which is filed by the other side, My Lord, that's aspirations.

3 **CHIEF JUSTICE B.R. GAVAI:** Not by other side, by Amicus.

4 **ASHOK GAUR:** Amicus, My Lord. Right now because they are sitting on this side, I'm saying.
5 My Lord, they say aspirations of these people have been affected, diluted, taken away, this is
6 absolutely a wrong proposition which has been put forward. Anybody who joins a judicial
7 service, this Court consistently held they are not like a government service. The government
8 servant might have some aspirations in a cadre that I have to go there and here. My Lord,
9 anybody who joins as a magistrate belong to the top court of this Court, it's only sacrifice. It's
10 only service to the society and that is the object of any judicial officer. There are no frills
11 attached. There are no power attached to this job. It is only sacrifice, My Lord. Either direct
12 recruitees come, they have a lucrative practice. They have worked at the bar for a long very
13 long time and, even the magistrate who joins, he also has a hope that in the latter, I'll be
14 rendering my service. So, My Lord, after joining the service, if somebody takes a view that, no,
15 no, my chances are taken away by such a system by the employer, that cannot be a basis to
16 claim aspiration.

17 My Lord, I have... to support that, why aspirations are limitless, My Lord, I am drawing Your
18 Lordships' attention to one application which has been filed in this Court by these All India
19 Judges, Your Lordship may have these IA. What are they claiming now? My Lord this IA, Your
20 Lordship have this *All India Judges Associations*, there's one IA filed. My Lord there they
21 say now, not only reservation in quota for principal district judge, for High Court also there
22 should be separate quota.

23 **CHIEF JUSTICE B.R. GAVAI:** We are only considering the IA...

24 **ASHOK GAUR:** But what I'm saying is.

25 **CHIEF JUSTICE B.R. GAVAI:** We are only considering the IA filed by the learned Amicus.

26 **ASHOK GAUR:** I know My Lord, but there's IA.

27 **CHIEF JUSTICE B.R. GAVAI:** We are not considering that IA.

28 **ASHOK GAUR:** My Lord hypothetically...

29 **CHIEF JUSTICE B.R. GAVAI:** Has anybody argued that IA?

1 **ASHOK GAUR:** No, My Lord, I don't...tomorrow.

2 **CHIEF JUSTICE B.R. GAVAI:** Why do you want us to check on it...?

3 **ASHOK GAUR:** What I am saying My Lord, these aspirations have no limit.

4 **CHIEF JUSTICE B.R. GAVAI:** You've said it Mr. Gaur. Thank you. Yes.

5 **ASHOK GAUR:** My Lord, one last submission. Ultimately, this Court has time and again
6 said, that if you join a government job you can get two promotions. That is the law My Lord
7 which has been developed right from *Raghunath Prasad Singh*. This is 1980 A,
8 supplementary SCC, page 519. My Lord the judgment have two paragraphs which are very
9 relevant. Why this is necessary promotion? As, I said, My Lord these people who join as civil
10 judges. They at least get four promotions in their life. It's not that they are stagnating. It is only
11 comparing with these other people that is causing a problem. So Your Lordships may have just
12 look at this judgment. One paragraph I'll read and Your Lordships may just look at this. Of
13 course it was a case of My Lord, police organization in Bihar. The person who came to this
14 court, he did not have any chance because options were invited and he did not want that he
15 should get an option and he should get promotion. There was no promotion avenue. So this
16 court My Lord in para 4. Lordships just four lines, I'll read before Lordships. My Lord para 4.
17 "Before we part with the appeal, we would like to take notice of another aspect. In course of
18 hearing of the appeal to a query made by the learned Counsel for the Appellant indicated the
19 reason as to why the Appellant was anxious to switch over to the general cadre. He relied upon
20 two or three communications which are part of the record, where it has been indicated that
21 there is no promotion opportunity available in the wireless organization, reasonable
22 promotional opportunity should be available in every wing of public service. That generates
23 efficiency in service and fosters the appropriate attitude to grow for achieving excellence in
24 service. In the absence of promotional aspects like services bound to degenerate and
25 stagnation kills the desire to serve properly. We therefore direct the state of Bihar to provide
26 at least two promotions." My Lord the judgment has been consistently followed, and as I made
27 a request...

28 **CHIEF JUSTICE B.R. GAVAI:** How is it applicable here?

29 **ASHOK GAUR:** My Lord, why I'm saying...

30 **CHIEF JUSTICE B.R. GAVAI:** Yes, thank you. Who is next?

31 **ASHOK GAUR:** Thank you My Lord. Obligated.

1 **VIPIN SANGHI:** May I please Your Lordship. My Lord, I am the second last batsman in the
2 last over.

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

4 **VIPIN SANGHI:** So whatever I have to do is...

5 **CHIEF JUSTICE B.R. GAVAI:** Not second last, third last.

6 **VIPIN SANGHI:** Third last My Lord, but I'm in the last over in any case My Lord. My Lord,
7 I am appearing...

8 **CHIEF JUSTICE B.R. GAVAI:** You already argued yesterday before a different
9 combination.

10 **VIPIN SANGHI:** Yes that was My Lord relating to the amendment My Lord, the notification.
11 Now I'm here to meet the submissions of the learned Amicus My Lord . My Lord since only
12 Your Lordship and Justice Chandra were there, I may inform My Lord in my written
13 submission I've made a mention of it, that while this matter is pending here, the State of Tamil
14 Nadu has come out with a notification amending Rule 8 of the relevant rules, My Lord, on 7
15 October. And what they've done is that they have actually vertically trifurcated the cadre of
16 district judges, by saying that there'll be different seniority lists. So that has been put to
17 challenge, Your Lordships are going to examine. Your Lordships have issued notice on that.

18 My Lord my submission... I've made a written submission. I'll not read it because it will take
19 time. I don't have time for that. So I'm just touching upon the points, and I have just two
20 paragraphs to show from two judgments and one suggestion which I have as a Counsel of Your
21 Lordship court, not as appearing for a Party. So there are three sources of recruitment. Your
22 Lordship is aware that once the...from different sources recruitments are made and they are
23 merged into one cadre, then the birth mark is lost. That is the well settled position My Lord.
24 May I just read one paragraph in that regard My Lord, this is from *Bhatnagar's case*. This
25 is *State of Punjab vs. R. N. Bhatnagar (1999), 2 SCC 330*, at page 340. I wish to read.
26 May I read, My Lord?

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

28 **VIPIN SANGHI:** May I read slowly My Lord?

29 **CHIEF JUSTICE B.R. GAVAI:** Yes you can.

1 **VIPIN SANGHI:** It says, "On the contrary, it is a rule of recruitment from two different
2 sources, namely, in case of Professor's cadre, 75% of the posts has to be filled by promotion,
3 while 25% by direct recruitment. These two sources of recruitment permit departmental
4 Promotees and direct recruits from the open market to get absorbed in the cadre. They merely
5 serve as two entry points for the cadre. Rule 9 deals with reservation of appointment for the
6 post of, to the post of Professor and does not deal with reservation of post of Professor for any
7 special class or category of candidates. It is well settled that once recruitment is made from
8 two sources, that is, departmental Promotees and direct recruitment from the open market
9 and once the candidates concerned enter into any cadre through entry point reserved for them,
10 they get fused and blended into one single cadre and their birthmarks get obliterated." In this
11 connection, we may usefully refer to the Constitution Bench Judgement of this court, in
12 **Triloki Nath Khosa**. Justice Chandrachud, His Lordship then was speaking for the
13 Constitution Bench while dealing with the recruitment to a cadre from two sources, namely,
14 direct recruits and Promotees, in the light of the earlier judgment of this court in **Roshan Lal**
15 **Tandon** made the following observations. The keywords of the judgment are, "the
16 recruitment from both the sources to Grade D were integrated into one class and no
17 discrimination could thereafter be made in favour of recruits from one source as against the
18 recruits from the other source, in the matter of promotion to Grade C." My Lord Page 341, I'm
19 reading at the top. "By this was meant that in the matter of promotional opportunities to Grade
20 C, no discrimination could be made between Promotees and direct recruits by reference to the
21 source..."

22 **CHIEF JUSTICE B.R. GAVAI:** That has already been argued by everyone.

23 **VIPIN SANGHI:** Yes My Lord. So that is the position. Settled position in law. My Lord in **B.**
24 **S. Mathur** now what is going to happen if the...if these...

25 **CHIEF JUSTICE B.R. GAVAI:** All these points have been argued, so we would appreciate
26 that you give...you said that you have some suggestions to be given.

27 **VIPIN SANGHI:** Very well. I'll first give Your Lordship the suggestion. My Lord the real
28 problem which this submission has been advanced, the real problem is occurring because of
29 the bunching which is taking place.

30 **CHIEF JUSTICE B.R. GAVAI:** These also has the experience of two High Courts.

31 **VIPIN SANGHI:** That's what I'm saying My Lord. In case recruitments are made as per the
32 roster year after year as Your Lordships have already directed **Malik Mazhar Sultan**, then
33 this problem will not arise because there would be proportionate representation for each class,

1 and they would be at the same level. What is happening is this bunching is taking place
2 because, let's say for five years recruitment is not made. Let's say, just to take an example,
3 2010, there are, let's say, ten vacancies of direct recruits as per the roster. The recruitment
4 does not take place till 2015, when this number has swelled to, let's say, 20 or 30. My Lord,
5 what happens is that in 2015, when the recruitment is done, people who are eligible in 2015,
6 that is, those who are 35 plus in 2015, they occupy positions which were available in 2010 also.
7 They may not be eligible in 2010. If supposing the examination were to be held in 2010, they
8 may not be eligible. But when in 2015 they compete, they are competing for all the posts. My
9 suggestion as a Counsel is that a distinction could be made that people who become, the
10 eligibility should be determined according to the year in which the vacancy arises. If that is
11 done, then a lot of this problem will be solved. Real problem as the Learned Amicus argued,
12 the problem is of age. All this problem about representation is rising because the age at which
13 the direct recruits come is generally considered as lower when compared to the Promotees
14 coming into the cadre. Therefore their retire My Lord, they fall by the side and the direct
15 recruits continue. That is the real problem. So this could be met, if the vacancy of a particular
16 year, in respect of that, the eligibility is determined according to the age on the date of that
17 particular year. So, that is my suggestion. And Your Lordship I will not take further time My
18 Lord, **B. S. Mathur**, Your Lordships have already seen. And I only want to say that direct
19 recruits, after all, this is induction of fresh blood. That is the whole purpose. Otherwise. My
20 Lord, one can...

21 **CHIEF JUSTICE B.R. GAVAI:** That's what 2002 judgment also says.

22 **VIPIN SANGHI:** So My Lord, otherwise, there is no need. One can do away with this cadre
23 completely. So, it cannot be that they are put to such a disadvantage that this incentive is lost,
24 and good candidates don't appear in that examination. And with all the factors My Lord, Your
25 Lordships judgment in...this year's judgment 2025, the LDCE age being reduced. In my very
26 humble submission Your Lordship should wait. And for example in 13 states out of in the
27 country, there is no disparity. In Tamil Nadu particularly, My Lord, I have given those figures,
28 the position is that there is more than adequate representation for the Promotee judges, at the
29 level of the principal district judge. They are more in number, that is because probably the
30 recruitment took place. And recruitment of direct recruits...the rules came in 2007; the
31 recruitments happened only four times from 2007 till now. That is the position.

32 So in my humble submission, Your Lordships may not take any steps at present. Your Lordship
33 should allow the system to work, and for it to be reviewed maybe ten years later in case there
34 is a need, which I don't think will arise because with the steps which have already been taken,
35 this disparity will not be there. Of course **Mazhar Malik Sultan** should be strictly

1 implemented My Lords. If that happens, the problem will vanish. There would be no such
2 grievance left. That's my submission.

3 **CHIEF JUSTICE B.R. GAVAI:** Thank you. Yes, Mr. Gupta.

4 **SIDDHARTH R. GUPTA:** I am representing direct recruits from the State of Madhya
5 Pradesh, the Higher Judicial Service officials. First of all, I'll quote certain statistics before
6 going to the submissions. My submission would be that in the State of Madhya Pradesh the
7 situation is diametrically opposite to what is the situation which has been quoted as an
8 example from Maharashtra, Gujarat, Bombay or Gujarat My Lords in the application moved
9 by the Amicus. Now I'll just take my written submissions, My Lords, are Volume 2, R4. I have
10 culled out the facts and figures from the counter affidavits of the various states My Lords. First,
11 I'll point out the situation in Madhya Pradesh. My Lords, before that, 2002 the three
12 judgments in this case directed that rota-quota system must be adopted by amending the Rule
13 suitably. The Roster Point System, R. K. Sabharwal. Till 2018, for 16 years the rules were not
14 amended. The seniority was determined on the basis of continuous officiation and date of
15 joining. So 50% Promotees, continuous official and date of joining if the vacancy year was the
16 same one. It was 2018, that is after our batch joined, that 2018 for the first time Roster Point
17 System has been introduced.

18 Now in our case, so what happened is, something very startling. My Lords may just see WS-2
19 which is page 59 of the written submissions, I have given certain dates. We are giving these
20 figures not just to highlight that it is not a situation pan India or that a problem which may be
21 existing in two or three states may not be telescope for the whole nation, is my submission. 59,
22 page Volume II, R-4, 59. WS-2. My Lord, there is a table, that is before My Lords. There are
23 two paginations. One is our pagination and the other is pagination of the written submissions.
24 Now what happened is 2017, we are representing... I am representing the 13-14 officers from
25 the 2017 batch My Lords. The advertisement for direct recruits was issued in March 2017, the
26 vacancy advertisement. Both the 50% and 25% LDCE was June 2017. The results were
27 declared in August and September 2016, our results were declared in October. The date of
28 joining of the previous two despite our vacancy three months prior My Lord, it's the date of
29 joining because the rules were date of joining and continuous official. The date of joining of
30 ours is five, six months after the 50% and the 25%. So what has happened is, My Lord, by
31 virtue of these rules *en bloc*, all these direct recruits who were selected *en bloc* in the gradation
32 list, they have been pushed below these 75% despite the fact admittedly when our vacancy was
33 before. The other day, my learned senior, Mr. Patwalia also highlighted the same problem with
34 respect to Delhi. So, My Lords, why this has happened? This has happened because non-
35 implementation of the rota-quota system. If this has been implemented and efficiently My

1 Lords, it would have been made effective My Lords, perhaps this problem would not have
2 arisen. R. K. Sabharwal says My Lord it is premised on the cadre strength on a running year
3 basis.

4 **JUSTICE SURYA KANT:** What you are arguing before us, now you want us to offset the
5 seniority?

6 **SIDDHARTH R. GUPTA:** No, My Lord. I'm not saying I'm not pointing out. I am just
7 pointing out, My Lord a state that it is not the situation pan India, what has been projected,
8 My Lords, in the application, which has been referred to the Constitution Bench. Today, what
9 I'm trying to point out is...

10 **JUSTICE SURYA KANT:** That doesn't mean you keep on repeating. The claims of a
11 particular High Court or a set of officers we are going to consider.

12 **SIDDHARTH R. GUPTA:** Yes, My Lord, I'm not seeking that either, My Lords, with due
13 respect. It's just My Lords, that if the roster quota system is implemented which is being done
14 from 2000, the other thing

15 **JUSTICE SURYA KANT:** You tell me that rota and quota is one of the most acceptable
16 principle to be followed. That's the general argument we...

17 **SIDDHARTH R. GUPTA:** I mean in all fairness, I'll use the word it's... amongst all the other
18 bad systems, it's the lesser bad, I would say.

19 **JUSTICE SURYA KANT:** You would also be saying that in Madhya Pradesh High Court...

20 **SIDDHARTH R. GUPTA:** 2018 it was introduced.

21 **JUSTICE SURYA KANT:** Matter ends then.

22 **SIDDHARTH R. GUPTA:** Yes, now, My Lord, matter doesn't end.

23 **JUSTICE SURYA KANT:** You are wanting us to apply it retrospectively to your cadre.

24 **SIDDHARTH R. GUPTA:** I am coming to my next submission. Now, My Lord, despite rota-
25 quota system being introduced in Madhya Pradesh, to... every year, My Lords, 50% 25%
26 examinations are happening My Lords. But for the direct recruit, My Lords, '23, '24 and '25.
27 We are at the end of '25. Three years, My Lord, this examination has not happened. So what is
28 the inevitable outcome, My Lords is, despite implementation of rota -quota, inevitably it will

1 break down. It will break down by virtue of a statutory provision, My Lords, which has been
2 introduced in Madhya Pradesh High Court rules, HJS rules, My Lord, that where, for two
3 years, the vacancy doesn't get filled up, it has to get surrendered. So, My Lords, my submission
4 is that this rota-quota system has been introduced, and if it keeps working properly, efficiently
5 on a year-to-year basis, this problem is not going to arise. All this all this concern... and this is
6 because this rota-quota system is not being employed. That's my first submission.

7 Now, My Lords, without prejudice to this submission, without prejudice to this rota-quota and
8 all, My Lords may just come to another table, which I have presented on the WS-1, page 57,
9 another table. On the basis of the facts and figures, first I'll refer to position in Madhya
10 Pradesh. 41 years is the age of entry of direct recruits in the District Judge cadre, 41 years
11 average.

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

13 **SIDDHARTH R. GUPTA:** Page 57, WS-1. It's a tabular chart, My Lords.

14 **CHIEF JUSTICE B.R. GAVAI:** Average?

15 **SIDDHARTH R. GUPTA:** Average, 41 years in DJ cadre direct recruit, 53 years in PDJ
16 cadre, Principal District Judge cadre. Similarly for Promotees, it is 41 years as per the counter
17 affidavit of the High Court, My Lords, I have culled out that. 41 years in the DJ cadre for the
18 Promotees, the 25%... the 50% and 55 years in the PDJ cadre, only two years gap. So, My Lord,
19 there is no prejudice as such despite the fact that rota-quota system has not been implemented.

20 Now, My Lords, I'll not read all of them. I have given the figures of date of entry in
21 Chhattisgarh, Jammu & Kashmir, Ladakh, Kerala, Punjab, Haryana on the basis of counter
22 affidavits, the average age of entry which has been evolved. Now, My Lords, today out of 52
23 District Judge... the Principal District Judges today, 52 or 51 Principal District Judges, 39 as
24 per the counter affidavit, as on today, 39 are those who are from the Promotee section, the civil
25 judges and only 12 are those who are from direct recruits.

26 So, My Lords, where is the ratio? The ratio, rather, goes in our favour. In fact, my submission
27 is that the application should have been moved otherwise for addressing the concerns of the
28 direct recruits, not for the civil judges, My Lords. That's my submission. So the ratio is 2.9:1,
29 My Lords, staggering almost three times of the *promotas qua* the direct recruits. So, My Lords,
30 these were the facts and figures. Now, quickly, I have two, three submissions, I'll point out, My
31 Lords. There is...

1 **CHIEF JUSTICE B.R. GAVAI:** Seven minutes are over.

2 **SIDDHARTH R. GUPTA:** Yes. Three more minutes

3 **CHIEF JUSTICE B.R. GAVAI:** Two more minutes.

4 **SIDDHARTH R. GUPTA:** Yes, please. My Lords, one chart, My Lords may just see in my
5 written submission, that is Volume 2, I've just given a chart, My Lords. After, My Lords, now
6 there are two dispensations. One is the pre-20th May dispensation and the other is post-20th
7 May dispensation, My Lords, which, as a reason in view of My Lord's judgment. I have given
8 a chart explaining the average time of progression of Civil Judge to entry into the District
9 Judge cadre, My Lords, I'll not read that. And we have calculated it average on the basis of the
10 counter affidavits that if we take... we consider merit, competency, diligence of the judicial
11 officers. All the four channels now after 20th May, including the *Rejanish* judgement
12 dispensation, My Lords, seven years. Within the age of 46, within the age of 40 years My Lords,
13 even after two attempts, within the age of 40 years, the Civil Judges would be entering the DJ
14 cadre. Earlier it was 41, 43, 44. Now, admittedly within 40 years.

15 **CHIEF JUSTICE B.R. GAVAI:** Some Lawyers have given a calculation that they would also
16 enter at 35.

17 **SIDDHARTH R. GUPTA:** Yes, 35. If we see the *Rajneesh* judgment we have calculated it
18 at 37. I mean, taking two attempts into consideration, if not one attempt then two attempts
19 into consideration.

20 My next submission is the cure to problem of stagnation of Civil Judges, which has given rise
21 to this application My Lords. The cure cannot be worse than the disease itself. The cure has
22 been already suggested in one of the three judgment of this Honourable Court in the *AIGA*
23 case, I have given with my compilation 2024. 2024, Volume 9. Volume 4. Volume V, R-9, page
24 102. In short, My Lords, what has been proposed by this Honourable court accepting the
25 SNJPC recommendations, three judge bench judgment My Lords, that assured career
26 progression must be given My Lord, (a). And second, there must be mechanism at the High
27 Court level for compulsory writing of ACRs on an annual basis, reviewing, preparing,
28 processing, and writing of the ACRs on an annual basis. If process of writing and finalization
29 of ACR is being done on an annual basis as per the directions of this Court, this stagnation is
30 not going to arise because automatically the channel promotion will, avenues of promotion
31 will open up.

1 My next submission My Lords is that which is at page 28 of my written submission, that,
2 "availability of uniform pay scale and equivalent promotional avenue for officers in the same
3 cadre similarly situated is a guarantee protected by 14 read with 16(1) of the Constitution of
4 India, employees grouped in the same cadre, similar service condition", that is the District
5 Judge cadre, "identical promotional avenues, common principal career progression shall
6 apply being a facet of equality in the matters of employment and..."

7 **CHIEF JUSTICE B.R. GAVAI:** Yes. Thank you.

8 **SIDDHARTH R. GUPTA:** My Lord just last submission.

9 **CHIEF JUSTICE B.R. GAVAI:** No, no, you have already.. you took three minutes, you have
10 already taken five more minutes.

11 **SIDDHARTH R. GUPTA:** My Lord one minute. My Lords *Triloki Nath Khosa* has been
12 relied upon My Lords. *Triloki Nath Khosa* vide paras 34 and 35 allowed My Lord's
13 induction of graduation as a requirement. Eligibility requirements for promotion on the
14 grounds, that was, it was in consonance with Article 335, that is 'Efficiency in Public
15 Administration'. The Supreme Court accepted it as a facet of promoting efficiency. Likewise,
16 My Lords, here it is not a public administration. It is just providing a progression opportunity.
17 My Lords there is one more judgment *Mohd. Shujat Ali* My Lords. In *Mohd. Shujat Ali*,
18 what was held was that it is not necessary that you must provide educational qualification for
19 promotion. What has to be seen is whether your requirement for reservation or preferential
20 quota aligns with the nature of duties or not. Eventually the nature of duty has to be seen, the
21 nature of public office has to be seen. *Mohd. Shujat Ali*. And therefore, my submission, last
22 submission My Lords, is that the criteria that they must have a sure shot progression avenue
23 or promotional avenue, My Lords, clearly doesn't fit in the requirement of 16(1) is my
24 submission.

25 **CHIEF JUSTICE B.R. GAVAI:** Thank you.

26 **SIDDHARTH R. GUPTA:** Grateful. My written submissions are there that they may be
27 considered. There are seven, eight issues I have... Grateful.

28 **CHIEF JUSTICE B.R. GAVAI:** Mr. Murlidhar. Mr. Sahay. Anunay Sahay.

29 **ANUNAY SAHAY:** I'm representing a single applicant in this matter.

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

1 **ANUNAY SAHAY:** And by necessary implication are the 16 members of the same batch. In
2 the present case the RG Delhi, the Jharkhand High Court has almost perjured himself by
3 stating in an Affidavit considering that the provisional promotion that have been given shall
4 be considered as promotions. Now, what has happened in Jharkhand is that despite 10:1 ratio
5 on Affidavit stated by RG Jharkhand High Court, they have already promoted vide a
6 notification dated 17th October this year itself. And provided selection timescale as well as
7 super time scale. Thereby anything that this court holds unless given retrospective effect to,
8 will have direct bearing on the process. Firstly the law, which is already prevailing is not being
9 followed, roster is not...

10 **CHIEF JUSTICE B.R. GAVAI:** Why the contempt of this Court. We are not addressing the
11 individual grievance.

12 **ANUNAY SAHAY:** This is not an individual...

13 **CHIEF JUSTICE B.R. GAVAI:** You addressed on the issue frame.

14 **ANUNAY SAHAY:** Your Lordship, I didn't address collective grievance. The process of
15 screening of the problems... screening of the complaints that are given against judges, there's
16 no mechanism of screening of the problems that are the complaints, the bogus complaints that
17 are usually...

18 **CHIEF JUSTICE B.R. GAVAI:** We are not considering the individual case of an individual
19 judicial officer as to whether there are any complaints or not. The issue has been framed by
20 the Court. You address us on the issue.

21 **ANUNAY SAHAY:** That has a bearing on...

22 **CHIEF JUSTICE B.R. GAVAI:** Thank you. Yes, Mr. Bhalla.

23 **RAJIVE BHALLA:** May I make a small request, Your Lordship, may an indulgence, Your
24 Lordship. I just want to file an IA.

25 **ANUNAY SAHAY:** My written submissions are on record, they may be considered.

26 **RAJIVE BHALLA:** I have filed an IA. That does not come under... I'm not addressing
27 arguments.

28 **CHIEF JUSTICE B.R. GAVAI:** Use the mic, Mr. Bhalla.

1 **RAJIVE BHALLA:** Your Lordship?

2 **CHIEF JUSTICE B.R. GAVAI:** Use the mic.

3 **RAJIVE BHALLA:** My Lord, I'm not addressing arguments. I'm just giving Your Lordships
4 statistics, in case a quota is implemented, how this anatomy will be disturbed. If Your
5 Lordships just allow me to place that on record while Your Lordships is writing the judgment,
6 Your Lordships may consider it. This is with respect to Haryana. May I just if Your Lordship,
7 may I just pass this on. I've filed an IA, it's somehow not come on record. If Your Lordship
8 could show me this indulgence. I'll just.

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

10 **RAJIVE BHALLA:** Your Lordship may just have para 21. I'll just point out one small para.

11 **JUSTICE VIKRAM NATH:** We're not arguing, we're only...

12 **RAJIVE BHALLA:** Not at all, My Lord. I'm totally satisfied with whatever everybody has
13 said. I am not going to trouble Your Lordship on....

14 **JUSTICE VIKRAM NATH:** We will look into your statistics.

15 **RAJIVE BHALLA:** Just these statistics, that's all, because nobody plays them on record. It's
16 just para... page 21, My Lord. Your Lordship may just see what's going to happen. This is
17 Haryana. This is A2, page 21. My Lord, up to 2030, even if there's a 25% quota Your Lordship
18 grants them, nothing will change. But after 2031, Lordship may just have the last para of the...
19 there'll be a dramatic change. May I just read the last, at the bottom, the last para? "TR no. 68
20 to 76, appointed in 2014, will be junior to Promotees numbered so and so, promoted in 2016."
21 And then this will continue like this. I'm just pointing out these facts to Your Lordship. So
22 there'll be a complete churning of the... the seniors will become juniors. This will continue. If
23 Your Lordships could ask the High Court to verify it, I'm putting it on record on the basis of
24 what I have seen.

25 **CHIEF JUSTICE B.R. GAVAI:** You're appearing for whom?

26 **RAJIVE BHALLA:** I'm appearing for one of the additional district judge, the direct recruits.
27 Also, My Lord, in Haryana and over the last 10 years only, I think, we have only about six direct
28 recruits for the last 10 years.

29 **JUSTICE SURYA KANT:** So only last recruitment I had worded...

1 **RAJIVE BHALLA:** Yes. Your Lordship was...

2 **JUSTICE SURYA KANT:** After that nobody has done?

3 **RAJIVE BHALLA:** Nobody. There's been no recruitment. So this factor could also be taken
4 into consideration and then, Your Lordship, what happens is every recruitment is challenged
5 again and again and again before this Court.

6 **JUSTICE SURYA KANT:** 11 years.

7 **RAJIVE BHALLA:** No recruitment, My Lord. That's the difficulty. I just wanted to bring all
8 these facts before Your Lordship. It will help Your Lordship in making up your mind one way
9 or the other, because there are serious problems otherwise. Now, this candidate, may I just
10 point out, My Lord. The vacancy came in 2004, three years she had to wait for her appointment
11 and in case this happens, she will retire as an ADJ. She will not even reach anywhere near
12 being a district judge what to talk of coming to the High Court that would be... that's a pipe
13 dream for her.

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

15 **RAJIVE BHALLA:** I've given this Your Lordship. I just don't want to say...

16 **RAKESH DWIVEDI:** May I just pass on one page of data, My Lords, only, no arguments.
17 Regarding the age, My Lord, which I mentioned that the average age of the Civil Judge is 28
18 years. So large number of candidates are appearing who are of a higher age. So this discloses
19 the data of the age product which the various candidates have appeared at different ages. So
20 large number of almost 50... 40% to 50% are, My Lords, above 30 years of age. That's one of
21 the reasons for age gaps. And it's a matter of choice when a candidate appears for sometimes
22 they take chances and some of... various others.

23 **SIDDHARTH BHATNAGAR:** Would Your Lordships may just have my written
24 submissions because I want to place a couple of paragraphs. Your Lordships may kindly come
25 to page 23. So at page 23 My Lord, para 29, after setting out the various views, the various
26 situation where Promotee judges are more or district direct recruit judges are more. This is
27 my submission in sum and substance in spirits for Your Lordships to consider. It's just one
28 para, I wanted to read. If Your Lordship has it, I'll just read.

29 **JUSTICE SURYA KANT:** Read.

1 **SIDDHARTH BHATNAGAR:** Sorry My Lord. Yes. "The above shows..." So above is the
2 data-rata pro, "shows that while in many states mostly direct recruit district judges are
3 occupying the post of principle district judge super time scale. In other states the position is
4 stated to be the reverse. Only in a very few states, the Promotee district judges and direct
5 recruit judges are occupying these senior posts in almost equal numbers. Therefore, it is
6 submitted that it is imperative to strike a balance between the two situations whereby, while
7 incentivizing the appointment of direct recruits from the bar, the extremely valuable judicial
8 experience of in service Promotee judges is not lost, and both Promotee judges and direct
9 recruit judges are equally provided an opportunity to progress to the post of principal district
10 judges and beyond." So this is the spirit in which I have made my submission.

11 Now, My Lord, so Your Lordships have seen in fact, even from what my learned friends on
12 both sides have said. I am of course as Amicus, is that My Lords, there are different situations
13 in different States, but there is a problem that needs to be addressed by Your Lordships is my
14 submission before Your Lordships. Your Lordships may not take it that Promotees deserve
15 something here or the direct recruit deserve something in another State. It's not a State specific
16 problem. It's a national issue on which My Lords I respectfully submit that Your Lordship will
17 take a view to address the problem itself. I have given some suggestions. There can be any
18 other suggestions which may be correct also, these are my suggestions for Your Lordship's
19 consideration. Now My Lord one of these suggestions that has come from the other side, and
20 which is a valuable suggestion in fact, My Lord Justice Surya Kant put it to me on the very first
21 day is, if the roster works perfectly fine year-by-year, et cetera, then a large amount of these
22 issues can be sorted out, dealt with et cetera. And the answer is yes, it can be. But it will not
23 fully deal, in fact, it will not deal with the age gap because the roster will not take into account
24 the age gap. The roster will fully perfectly.... So far, unfortunately, the roster has not worked
25 for 20-odd years. But let us assume for the sake of argument that **Malik Mazhar** is fully
26 followed. Roster is fully followed, every post is filled up annually, etc. Perfectly filled up. The
27 age issue will still not be gone into. And therefore, that is one of the points, which is one of the
28 reasons which leads to bunching at the top. It is an important facet which My Lords just by
29 proper working of the roster...Roster should work properly, of course. And therefore, in some
30 of my suggestions, if Your Lordship were to take that into account, that will require a bit of
31 tweaking. That is my second submission before Your Lordships. The roster My Lord will be
32 working perfectly at the entry level, as I said, perfectly at the entry level. But when it comes to
33 financial upgradation, Shetty Commission uses the word financial upgradation. Promotion is
34 a word that the rules mentioned. But it is actually in the nature of a financial upgradation to
35 selection grades, super timescale, cadre being the same that is where the bunching will happen
36 because of age disparity. That is the reason why I have given these suggestions to Your

1 Lordship. Otherwise, my suggestion would also have been, make the roster work properly, and
2 this sorts out the whole problem. So this My Lord my second suggestion.

3 **JUSTICE SURYA KANT:** That hardship which was being caused because of this age
4 factor,...

5 **SIDDHARTH BHATNAGAR:** My Lord.

6 **JUSTICE SURYA KANT:** That stands effectively addressed by the other Constitutional
7 Bench.

8 **SIDDHARTH BHATNAGAR:** Rajneesh, My Lord?

9 **JUSTICE SURYA KANT:** The other Constitutional Bench judgement now.

10 **SIDDHARTH BHATNAGAR:** That only deals with the issue of civil judges now being
11 allowed to directly... Yes

12 **JUSTICE SURYA KANT:** They are able to now compete even for direct...

13 **SIDDHARTH BHATNAGAR:** Correct.

14 **JUSTICE SURYA KANT:** Or if they are eligible for that 25% with enhancement of some
15 10% to 20%.

16 **SIDDHARTH BHATNAGAR:** I'll answer that.

17 **JUSTICE SURYA KANT:** They will have now accelerated promotional avenues.

18 **SIDDHARTH BHATNAGAR:** Correct. So I'll straight away come to that issue, because
19 that's a very important point. What was said was and My Lords also correctly said, that there
20 are three avenues open. Firstly, from Civil Judge Junior division to Civil Judge senior division.
21 After three years, you have the option to take this limited competitive examination. So that
22 gives you one opportunity to move upwards. Second, opportunity to move upwards is from
23 Civil Judge Junior Division to District Judge entry level by taking the limited competitive
24 examination which was there since 2002. And what My Lords have just put to me is now
25 there's a third way in which you can abandon the Civil Judge cadre altogether and join the
26 direct recruit cadre, that's an option open to you. The only difficulty with that, of course it's
27 open and people have their choices. Problem with that will be that there will still be 50 percent
28 of the District Judge cadre, who will not be an LC, who will not be part of LC. These are not

1 dead wood people. These are people who've been promoted from step to step, passing
2 suitability tests, et cetera, based on ACR and performance. So it is not as if these are people
3 who don't deserve anything. So, My Lord, these are highly deserving 50% people who may not
4 have gone through or may not have cleared LC examination or may have chosen not to take
5 direct recruit examination, but that is 50 percent of the cadre today. So My Lord that will
6 always be the case. Whoever moves on to a higher, takes the LC, etc., but still 50% will be these
7 people. So that is a suggestion My Lord for Your Lordships consideration that one has to...so,
8 balancing will require consideration of this 50% of the cadre also.

9 Now, next, let's examine one more issue. Let's look at the question of selection two, selection
10 grade and super time scale. The rules say it is merit cum seniority. So let's say merit. So, all
11 right, so someone says, very well, it's merit, so the entire cadre comes into the picture. So
12 there's no discrepancy, no discrimination also. Two levels of discrimination. Firstly, to be
13 eligible for selection grade, you have to be five years as District Judge Entry Level, which a
14 person of higher age will be ill My Lords in a position to afford that. Secondly, there is a zone
15 of consideration. So if you are opening up the field to everyone, is all right, but you are saying
16 merit cum seniority, but zone of consideration, 3:1. So if it is 3:1, then for one boss only three
17 officers and normally the senior most will precede. And Your Lordship saw the West Bengal
18 rule, which my Learned friend, Mr. Jaideep Gupta cited. The criteria to enter into that zone is
19 fairly minimal, if I may so My Lord. (1) You should not get 'E' or 'F', etc. That is not merit.
20 That's mostly suitability for you to reach that level. Either Your Lordships are opening up the
21 entire cadre for everyone to be considered on merit for selection grade and My Lord the super
22 timescale. Otherwise, zone of consideration will again restrict everything back. Just have a
23 look at (1) Rules that I'll cite, most High Courts follow that. Just see the Assam rules. Most
24 High Courts have this, it is at the beginning of my written submission of the...which volume is
25 this? My Lord, please come to Volume IV-A.

26 **JUSTICE SURYA KANT:** Volume IV?

27 **SIDDHARTH BHATNAGAR:** Volume IV-A, My Lord. I'm just citing (1), most of the High
28 Courts have the following rules. These are the Assam Judicial Service Rules. They start My
29 Lord at...

30 **JUSTICE SURYA KANT:** Page 33.

31 **SIDDHARTH BHATNAGAR:** 33, but I'm not troubling Your Lordships with that. Please
32 come straight away to My Lord Page 80, Schedule E.

33 **JUSTICE SURYA KANT:** You are referring to page?

1 **SIDDHARTH BHATNAGAR:** I was at page 80, Schedule E, which is title, 'general criteria
2 for promotion'. And as I said, virtually all rules follow this pattern. Maybe a little bit here and
3 there, but the pattern is the same. So My Lords the general criteria for promotion, if Your
4 Lordships has it at page 80 is: "(a) Considering the number of vacancies to be filled up,
5 Assessment Committee shall assess the judgments, ACRs of the officers who are within the
6 zone of consideration, ratio being 1:3. Suitability and overall performance of officers, including
7 disposal of cases and the remarks of the concerned portfolio judge shall be considered. In case
8 any departmental proceeding or inquiry is pending against an officer, his promotion may be
9 considered and the decision be kept in a sealed cover to be opened on conclusion of the
10 departmental proceeding. (b) Officers against whom there's adverse entry regarding their
11 character integrity will be eligible for promotion provided the required benchmark has been
12 obtained subsequent to the adverse entry."

13 Now, Lord, if Your Lordship would just turn to the next page, and here we are concerned with
14 this subheading from District Judge to selection grade District judge, which is at the bottom
15 of page 81. So there are three criteria, one is, "merit and suitability". Second, "minimum four
16 good out of last five ACRs or officer must have two good and one very good ACRs in the last
17 five years." And then, My Lord, from selection grade district judge to super timescale district
18 judge, "Merit cum suitability, officer must have three good and one very good rating during
19 last five years or officer must have two good and one outstanding rating during the last five
20 years."

21 So, My Lord, first of all, there is a time period that... for which you need these gradings.
22 Secondly, although it says merit cum suitability, but you've restricted it to 1:3. So, in a sense,
23 what you are giving... what is sought to be given is pure merit is taken away with the zone of
24 consideration because only three officers per vacancy have been considered. So, where is the
25 question of the merit across the cadre are being considered, My Lord, with great respect, My
26 Lord, a question I ask this.

27 **JUSTICE SURYA KANT:** How would this be a query, Mr. Bhatnagar? How can... within a
28 cadre...

29 **SIDDHARTH BHATNAGAR:** Yes.

30 **JUSTICE SURYA KANT:** Again that most quoted expression, how can we create an artificial
31 parity or disparity on the basis of birthmark?

32 **SIDDHARTH BHATNAGAR:** No, we are not...

1 **JUSTICE SURYA KANT:** Amalgamated in cadre at the entry point. At the entry point, based
2 on roster or continuous like whatever maybe the case. Once the seniority is determined, then
3 how can you total classify?

4 **SIDDHARTH BHATNAGAR:** I'm saying don't classify I am saying that don't reduce it to
5 1:3. By reducing it to 1:3, you are taking people out of the zone is what I'm saying. Suppose,
6 My Lord, the criteria is merit...

7 **JUSTICE SURYA KANT:** Section grade or super timescale can't be granted to the entire
8 cadre.

9 **SIDDHARTH BHATNAGAR:** No, it can't be.

10 **JUSTICE SURYA KANT:** So basically, a financial incentive.

11 **SIDDHARTH BHATNAGAR:** Yes.

12 **JUSTICE SURYA KANT:** On seniority and performance, both. That's why merit cum
13 seniority.

14 **SIDDHARTH BHATNAGAR:** Yes.

15 **JUSTICE SURYA KANT:** It's not something timescale that you.

16 **SIDDHARTH BHATNAGAR:** It is not. It is not like the civil judge cadre where it is
17 timescale, but, My Lord, what this does in effect is this now excludes people who comment at
18 an older age. And therefore, either they retire earlier or they lower down the... So it acts
19 through the exclusion of people, is what I'm saying. If it is pure merit, fine, no problem, that's
20 one way of looking at it. But this is an exclusionary principle.

21 **JUSTICE SURYA KANT:** The interplay between the rule is like this, that it excludes a
22 particular class of person, that is understandable. But this is what, this is a simple incidence
23 of service.

24 **SIDDHARTH BHATNAGAR:** No, it is an incident. Merit cum seniority is an incident of
25 service. But having said merit comes seniority, which effectively means merits, seniority, only
26 if merit is equal. Then you make it 1:3. So, the age factor... So a person who is older, etc, who
27 comes in later or later to the cadre or lower doesn't come into the zone. That's the problem.
28 That's my second submission, therefore, is only based on the zone of consideration. My second
29 suggestion to Your Lordships.

1 My Lord, the third argument is with respect to the argument that was made about this being
2 in the nature of a reservation and not being permitted. Mr. Bhushan had argued that point.
3 For that, I only want to cite one para of one judgment before Your Lordship, which is at page
4 43... page 40 of my written submissions. This is not a five-judge Bench, it's a two-judge Bench.
5 But the question here, My Lord, is exactly this.

6 **CHIEF JUSTICE B.R. GAVAI:** This page 40 of your...

7 **SIDDHARTH BHATNAGAR:** Page 40 is a judgment of my submissions, My Lord. There's
8 a judgment called *Kuldeep Kumar Gupta*, which Your Lordships have. My Lord, please
9 turn over the page to 41, there is a Question 2. "Providing a quota in the promotional cadre
10 whether can be said to be reservation within the meaning of 16(4), and as such, can it be held
11 to be violative of 16(4) of the Constitution." And the answer which was given by Your Lordships
12 is at page 43. Just one para I wanted to place, I will come to, My Lord, this view with great
13 respect to Your Lordship.

14 "So far as the second question is concerned, we are unable to persuade ourselves to agree with
15 the submissions of Mr. Subramaniam that providing quota tantamount to a reservation.
16 Article 16 deals with equality of opportunity in matters of public employment and 16(4)
17 enables the state for making any provisions for reservation of appointments or posts in favour
18 of any backward class of citizens, which, in the opinion of the state, is not adequately
19 represented in the services under the state."

20 "This Court, in *Indra Sawhney's* case has held, that no such reservation is permissible in
21 the promotional posts and to get over the said decision 16(4a) has been inserted by the
22 Constitution. But we fail to understand as to how providing a quota for a specified category of
23 personnel in the promotional post can be held to be reservation within the ambit of 16(4).
24 Providing a quota is not new in service due to students and whenever the feeder category itself
25 consists of different category of persons and when they are considered for promotion, the
26 employer fixes a quote of each category so that the promotional cadre would be equivalenced
27 and at the same time, each category of persons in feeder category would get the opportunity
28 of being considered for promotion. This is also, in a sense, a larger interest of administration
29 when it is the employer who is best suited to decide the percentage of posts in the promotional
30 cadre which can be earmarked for different category of persons. In other words, this provision
31 actually effectuates the constitutional mandate engrafted in 16(1) as it would offer equality of
32 opportunities in matters relating to employment, and it would not be the monopoly of a
33 specified category of persons in the feeder category to get promotion. We therefore, do not
34 find any infraction of the constitutional provision engrafted in 16(4) while providing a quota

1 in the promotional cadre, as in our view it does not amount to reservation." In fact in the 2002
2 judgment, Your Lordships have provided a 50% promotional quota to judges from the civil
3 judges junior division. That's also there. That's what Your Lordships have already done, which
4 everyone has accepted.

5 Lastly, I'll come to the three **Triloki Nath** point, which was taken. Now, there the proposition
6 I'm placing before Lordships is this. When two categories are integrated into one class, they
7 cannot be differentiated on the ground of their birth mark being lost. But this is not a
8 classification based on birthmark. This classification, I submit to Your Lordships, if Your
9 Lordship accept it, would be in the nature of improving efficiency of administration. In the
10 interest of improving judicial administration which Your Lordships in **K. V. Rejanish...** The
11 five judgments which My Lord referred to has said... have said already that judicial experience
12 far exceeds advocates experience. So My Lords in my respectful submission this does not fall
13 foul of **Triloki Nath** principle at all. Your Lordships are not differentiating on the basis of
14 birthmark. But this is....

15 **JUSTICE JOYMALYA BAGCHI:** Whatever here is, the upgradation is on the basis of
16 experience also. That experience as judicial experience as a District Judge.

17 **SIDDHARTH BHATNAGAR:** Yes.

18 **JUSTICE JOYMALYA BAGCHI:** Five years. So in this situation how do you add on the
19 additional experience which has already merged into the common cadre?

20 **SIDDHARTH BHATNAGAR:** Because that experience only a civil judge...My Lords the
21 vast experience of 15, 20 years, 10 years, 15 years that they have is only limited, is only given
22 to Civil Judges who come through that route. A District Judge does not have that experience.
23 A direct recruited District Judge. So either we say that, that does not count at all. If it does not
24 count at all then, of course, the argument cannot be accepted.

25 **JUSTICE JOYMALYA BAGCHI:** Does it have a rational nexus when the role performed is
26 one of a District Judge, which is of a much superior judicial role than that of a Civil Judge
27 junior... ?

28 **SIDDHARTH BHATNAGAR:** But even while performing that superior judicial role, the
29 fact that you performed a judicial role is not...my respectful submission is written off, number
30 one. Number two, what is also not written off is the fact that the other person has come as an
31 advocate or via through a Civil Judge for a few years, but here he's continuously for 15, 20

1 years been a Civil Judge. Or My Lord, in the alternative, let's put it this way, then what the
2 Justice Shetty Commission is saying is that give them some weightage for experience.

3 **JUSTICE JOYMALYA BAGCHI:** That's another consideration.

4 **SIDDHARTH BHATNAGAR:** That's another consideration.

5 **JUSTICE JOYMALYA BAGCHI:** Entry point.

6 **SIDDHARTH BHATNAGAR:** At the entry point.

7 **JUSTICE JOYMALYA BAGCHI:** It does not call foul of sub-classification in a cadre.

8 **SIDDHARTH BHATNAGAR:** I'm only giving Your Lordships the alternative to what I'm
9 saying, because I have put that also as part of my submissions. That My Lords is also there.
10 The fact that 50% of the cadre, which is the promotional cadre has that experience with Justice
11 Shetty felt in 2002 to be given. Now with great respect the 2002 judgment of Your Lordships
12 has rejected it. But there's no reason at all. There's one line in that judgement.

13 **JUSTICE JOYMALYA BAGCHI:** *Sabharwal*. Relying on *Sabharwal*...

14 **SIDDHARTH BHATNAGAR:** My Lords it only says one line. May I just show that line? My
15 Lords I have in my written submissions set out in some detail the Justice Shetty Commission
16 recommendation for Your Lordship's consideration.

17 **JUSTICE JOYMALYA BAGCHI:** That's your third submission.

18 **SIDDHARTH BHATNAGAR:** Third submission. To which the way the 2002 judgment has
19 said, of course your Lordships are entitled to say that, but there's no reasoning given at all. It
20 says only...

21 **JUSTICE JOYMALYA BAGCHI:** Just show me that para.

22 **SIDDHARTH BHATNAGAR:** My Lords I will just read that para. My Lord, in fact this is at
23 para 8 of my written submission is set out there. Para 30 at page 8. "We disapprove the
24 recommendation of giving any weightage to the members of the subordinate judicial service
25 in their promotion to the higher judicial service in determining seniority *vis a vis* direct
26 recruits and Promotees. Roster system will ensure fair play to all while improving efficiency in
27 the service." So that aspect has not been gone into which I have again put before Your
28 Lordships to please consider now, because this is an opportunity. In *Rejanish's* case, for

1 instance Your Lordship accepted several of the Justice Shetty Commission's recommendations
2 made in 1999. I'm requesting Your Lordships to look at this and see whether this can be
3 something that can be gone into. These are my four or five points.

4 **CHIEF JUSTICE B.R. GAVAI:** Thank you.

5 **SIDDHARTH BHATNAGAR:** Mr. Dwivedi wants to just add a little bit.

6 **DINESH DWIVEDI:** Five minutes only if Your Lordship permits?

7 **CHIEF JUSTICE B.R. GAVAI:** Next one.

8 **VIBHA DATTA MAKHIJA:** The first suggestion, as far as the Amicus's first suggestion is
9 he's put it as 1:1. But taking in account the fact that there are three categories Your Lordships,
10 the division in the roster Your Lordships has to be 75, 25, 25.

11 **CHIEF JUSTICE B.R. GAVAI:** Then what is the incentive for the direct? If we provide 25
12 for them why would they give their service and come direct?

13 **VIBHA DATTA MAKHIJA:** As far as LDCE was concerned...

14 **CHIEF JUSTICE B.R. GAVAI:** You want for LDCE also 25.

15 **VIBHA DATTA MAKHIJA:** I'm talking about LDCEs only. As far as LDCEs are concerned,
16 Your Lordships our roster points have to...cannot be clubbed with either Promotees or for
17 direct recruit. It has to be a separate roster point.

18 **CHIEF JUSTICE B.R. GAVAI:** How can there be a separate roster point? The rota quota
19 is...

20 **VIBHA DATTA MAKHIJA:** It is already a separate roster point.

21 **CHIEF JUSTICE B.R. GAVAI:** As far as rota quota, rightly first two will go to the
22 Promotees, the third will go to the LC, and fourth will go to direct.

23 **VIBHA DATTA MAKHIJA:** That is what I'm saying, even in terms of weightage, et cetera,
24 when that is calculated, Your Lordship, the same benefit should flow to all of us. That is what
25 I'm saying that as far as LDCE is concerned Your Lordship it being a category, cannot be
26 deprived of the benefit which it is getting otherwise as well.

27 **CHIEF JUSTICE B.R. GAVAI:** You're already getting a jump over the others.

1 **VIBHA DATTA MAKHIJA:** Your Lordship the bunching will come down. The problem that
2 we are facing on ground, Your Lordships in bunching we are coming down. That is the problem
3 that we are facing, whereas because of the merit, Your Lordships we must be placed higher.
4 That is the ground reality that is happening.

5 **DINESH DWIVEDI:** Just two minutes I would like to take. Rest is I will follow what my
6 friends have said. My Lord my submission was to assist Your Lordships that the rota system,
7 which has been borrowed from *Sabharwal's* case fairly doesn't apply in fact, because it's a
8 case of one selection and this is the case of three selections. So, unless we follow the roster
9 system for the selection process as laid down in *Malik Mazhar Sultan's* case, it would not
10 be possible to apply the roster system at all. So if *Malik Mazhar* is sought to be followed
11 meticulously, then perhaps simultaneously appointments can be issued, not following the
12 roster system. But the problem that arises is if we start applying roster system not annually,
13 but like a current account.

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

15 **DINESH DWIVEDI:** That should not be done, otherwise we'll be attributing seniority to the
16 people who are appointed in '18, '17 or '16 seniority, that would not be...that is resulting in
17 unfairness My Lord and bunching. That's my submission.

18 **COUNSEL:** I am speaking for the Madras High Court, My Lord.

19 **CHIEF JUSTICE B.R. GAVAI:** Thank you.

20 **COUNSEL:** My Lord, thirty seconds.

21 **DINESH DWIVEDI:** Grateful.

22

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

24