

(2018) 05 CAL CK 0170

In the Calcutta High Court

Case No : M.A.T. 946 of 2017, C.A.N. 6119 of 2017

Samar Roy & Ors.

APPELLANT

Vs

Partha Sarathi Sen & Ors.

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

West Bengal Judicial (Condition of Services) Rules, 2004 — Rule 6(b), 26(b), 26(1)(a), 26(1)(b), 26(1)(c), 26(1)(a)(b), (c), 28, 30, 31, 31(1), 67
Constitution Of India, 1950 — Article 32, 142

Citation : (2018) 05 CAL CK 0170

Hon'ble Judges : ANIRUDDHA BOSE, J;ARINDAM SINHA, J

Bench : Division Bench

Advocate : Pratik Dhar, Ritwik Pattayanak, Pappu Adhikari, Samir Halder, Joydip Kar, Siddhartha Banerjee, Abhisek Baran Das, Kishore Datta, Chama Mookherji, Manika Pandit, Saktinath Mukhopadhyay, Mukul Lahiri, Anirban Pramanick, Bikash Ranjan Bhattacharya

Judgement

ANIRUDDHA BOSE, J.",

1. The subject of controversy in this appeal is a draft gradation prepared by the High Court Administration in respect of judicial officers for the post of, District Judge (Entry Level). This gradation list forms part of a circular bearing no. 4139-R (JS) dated 29th November, 2016. The draft gradation list", was successfully challenged before the learned First Court by 18 (Eighteen) judicial officers all being in the cadre of District Judge (Entry Level). Out, of these eighteen officers, fifteen (being petitioner nos. 1 to 15 in the writ petition) were directly recruited as District Judges (entry level) from", amongst the members of the bar in a selection process undertaken in the year 2009. Two of them (writ petitioner nos. 16 and 17) were recruited,

through the same process in the year 2010. The other writ petitioner (no. 18) entered the service through a process known as "jump promotion",

We shall better explain these sources of recruitment along with the third method "being promotion on the basis of merit-cum- seniority and on,

passing a suitability test, later in this judgment. None of the writ petitioners had figured in the said gradation list. In the judgment under appeal, the said",

draft gradation list has been invalidated.,

2. Recruitment to the post of District Judge (Entry Level) is effected in West Bengal in terms of the West Bengal Judicial (Condition of Service),

Rules, 2004 (the 2004 Rules). These Rules were framed in terms of directions issued by the Hon'ble Supreme Court in the case of All India",

Judges' Association and Ors. Vs. Union of India [(2002)4 SCC 247]. This judgment was delivered on 21st March, 2002. The 2004 Rules became",

operational on 1st October, 2004. In this judgment, it has been observed and directed:-",

"27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District,

Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by",

promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the,

edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the",

judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result,

in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are,",

become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the",

Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that",

there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges",

and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from,

amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are",

of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so",

as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In",

order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is",

maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the",

total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cut-seniority. For this purpose, the High Courts",

should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with,

adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit,

through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than,

five years. The High courts will have to frame a rule in this regard.,

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:",

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability, test;,,

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than, five yearsâ?? qualifying service; and,

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test, conducted by respective High Courts.,

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.,

29. Experience has shown that there has been a constant discontentment

amongst the members of the Higher Judicial Service in regard to their, seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers, recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways", of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-, cum- seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has", also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a", roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals", with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their", recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster", system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R.K. Sabharwal", v. State of Punjab. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts, and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably, amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal case as early as possible. We, hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively, except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the, members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be, adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003."

3. So far as the present appeal is concerned, the following provisions of the 2004 Rules are relevant:-",

24. Cadre_ (1) The Higher Judicial Officers in the rank of District Judges of the service as mentioned in Part II shall include the following posts,

forming the cadre, namely:-",

(a) District Judge;;

(b) District Judge in selection grade;;

(c) District Judge in super time scale.,

(2) The strength of the cadre of the service shall be such as specified in Schedule IV and the Government in consultation with the High Court may,

vary such strength of the cadre from time to time. Provided that the number of posts as referred to in clause (b) and clause (c) of sub-rule (1), shall be",

determined by the Government from time to time depending upon the total strength of the officers in the service.,

25. Member of service.- (1) On or after coming into force of these rules, the Higher Judicial Officers in the rank of District Judges recruited to any of",

the posts as mentioned in sub-rule (1) of rule 24 in accordance with these rules, shall be the member of the service.",

(2) Notwithstanding anything contained in the foregoing provisions of this rule, the Higher Judicial Officers in the rank of District Judges holding",

substantively or in the officiating capacity of the posts referred to under sub-rule (1) of rule 24, shall, prior to the commencement of these rules, be",

deemed to be member of the service.,

26. Method of recruitment:- (1) On or after the commencement of these rules, the appointment of the Higher Judicial Officers in the rank of District",

Judged in the post of District Judge as mentioned in clause (a) of sub-rule (1) of rule 24, shall be made-",

(a) by direct recruitment from the Bar;;

(b) by selection through promotion, on the basis of merit-cum-seniority and on passing of a suitability test, from amongst such Judicial Officers other",

than District Judges as mentioned in clause (b) of sub-rule (1) of rule 6 of these rules;;

(c) by promotion strictly on the basis of merit through limited competitive examination of such Officers other than District judges as mentioned in,

clause (b) of sub-rule (1) of rule 6 of these rules having not less than five years of qualifying service: Provided that the number of vacancies to be,

filled up by direct recruitment as stated in clause (a) shall not be more than 25% of the total permanent strength and such recruitment shall as far as,

possible be made annually;

Provided further that the number of vacancies to be filled up by promotion as stated in clause (c) shall, subject to the provision of the third proviso, not",

be more than 25% of the total permanent strength and such recruitment shall as far as possible be made annually;;

Provided also that where suitable persons are not available for appointment to the posts of the Judicial Officers in the rank of District Judges under,

this Part, the number of vacancies required to be filled up by direct recruitment as stated in clause (a) and by promotion as stated in clause (c), shall",

not be carried forward and such vacancies may be filled up- (a)in respect of vacancies as required to be filled up by direct recruitment as stated in,

clause (a) (i) firstly, from amongst the eligible Judicial Officers in the rank of District Judges as selected by the method as stated in clause (c):",

(ii) secondly, from amongst the eligible Judicial Officers in the rank of District Judges selected by the method as",

stated in clause (b);,

(b)in respect of vacancies required to be filled up by promotion on the basis of merit as stated in clause (c), from amongst the eligible Judicial Officers",

in the rank of District Judges selected by the method as stated in clause (b). (2) The appointment of the Higher Judicial Officers in the rank of District,

Judges in the post of District Judge in selection grade and District Judge in super time scale, as referred to in clauses (b) and (c) of sub-rule (1) of rule",

24, shall be made by the High Court by selection of the Higher Judicial Officers in the rank of District Judges of service from posts as referred to in",

clause (a) and clause (b), respective, of that rule and such appointment shall be made by selection on the basis of meritcum-seniority.",

Â 27. Qualification for direct recruitment.- (1) No person shall be eligible for appointment by direct recruitment unless- (a) he is a citizen of India;;

(b) he has attained the age of 35 years and has not attained the age of 45 years (relaxation of 3 years on upper age for the candidatesbelonging to the,

Scheduled Castes and Scheduled Tribes) on the first day of January of the year in which the applications for recruitment are invited;;

(c) he has been practicing for not less than seven years as an advocate; and,

(d) he has good character and is of sound health and free from any bodily defect which render him unfit for such appointment.,

(2) The selection by way of direct recruitment to posts as referred to in clause (a) in sub-rule 24, shall be made by the High Court by way of",

conducting a written examination and viva voce in accordance with such manner and subject to such guidelines as may be specified by the High Court,

from time to time.,

28. Appointing authority.- (1) All appointments to the post as referred to in clause (a) of sub-rule (1) shall be made by the Governor in accordance,

with recommendations of the High Court.,

(2) All selections to posts referred to in clause (a), clause (b) and clause (c) of sub-rule (1) of rule 24 shall be made by the High Court.",

29. Probation.- (1) A Judicial Officer in the rank of District Judges appointed to the posts as mentioned in clause (a) of sub-rule (1) of rule 24 shall be,

on probation for a period of two years from the date on which he joins duty.,

(2) The High Court may, at any time, extend the period of probation but the total period of probation shall not exceed three years.",

(3) The High Court may, at any time, during or at the end of the period of probation, revert a promote Judicial Officer in the rank of District Judges to",

his substantive post from which he was promoted and in the case of direct recruitment, the High Court may recommend termination of his service.",

(4) On successful completion of probation, the probationer shall, if there is permanent post available, be confirmed in the service and if no permanent",

post is available, a certificate shall be issued by the High Court to the effect and as soon as a permanent post becomes available, he shall be confirmed.",

(5) A probationer shall be deemed to be on probation until confirmed, reverted or terminated, as the case may be.",

30. Posting and transfer.- All postings and transfers in the rank of Higher Judicial Officers in the rank of District Judges shall be made by the High,

Court.,

31. Seniority.- (1) The seniority of the Higher Judicial Officers in the rank of District Judges appointed to the post as referred to in clause (a), (b) and",

(c) of sub-rule (1) of rule 24, shall, unless reduced in rank on account of punishment, be determined in accordance with- (a) the date of continuous",

officiation in case of officers promoted to the posts as referred to in clause (a) of

sub-rule (1) of rule 24; (b) the date of order of appointment in the, case of direct recruit to the posts as referred to in clause (a) of sub-rule (1) of rule 24; (c) the date of order of selection to posts as referred to in, clause (b) and (c) respectively of sub-rule (1) of rule 24 or such date, as may be specified by the High Court: Provided that in the case of direct", recruit or promotee under clauses (a), (b) or (c), as the case may be, of subrule (1) of rule 26 to the post referred to in clause (a) of sub-rule (1) of", rule 24, if the date of continuous officiation of the Higher Judicial Officer in the rank of district judges promoted to such post and the date of", joining/appointment of the direct recruit in the service be the same, the seniority inter se shall be fixed according to the 40 point roster as determined", by the High court from time to time. Provided further that seniority inter se amongst the Higher Judicial Officers in the rank of District Judges, promoted by an order of the same date or amongst direct recruits appointed by an order of the same date, shall follow the order in which their names", have been recommended by the High Court. Provided also that the relative eniority of the Judicial Officers of the West Bengal Higher Judicial Service, appointed prior to coming into force of these rules and governed by the West Bengal Higher Judicial Service (Determination of Seniority) Rules, 1979," , shall not be affected.â??,

4. In M.A.T. No. 946 of 2017, the appellants are nine judicial officers who were promoted as District Judge (Entry Level) from the 50% pool of in-", service candidates. Mr. Pratik Dhar, learned Senior Counsel has appeared in this appeal on behalf of the appellants. The writ petitioners/respondents", have been represented by Mr. Saktinath Mukhopadhyay, learned Senior Counsel. Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel has", appeared on behalf of respondent nos. 26 and 27 in this appeal. These two respondents are jump promotees. Mr. Joydip Kar, learned Senior Counsel", has represented the High Court Administration. Learned Advocate General has appeared for the State.,

5. The draft gradation list, which has been invalidated by the learned First Court came into existence after a vacancy notification was published and", selection or recruitment process was concluded in the year 2009, from the aforesaid three different streams. The initial vacancy notification bearing", no. 5632-R (JS) dated 31st March, 2009 stipulated that keeping in view future

vacancies that might arise in that year due to retirement, elevation to the",
 High Court, death, deputation to the other departments etc., 131 vacancies in the said cadre was to be filled up by direct recruitment from the Bar and",
 from amongst the eligible member of the West Bengal Judicial Service. On 15th April, 2009, another notification was issued by the High Court",
 Administration inviting application for filling up the posts of the Higher Judicial Service by promotion strictly on merit through limited competitive,
 examination. This notification stipulated panel would be prepared for 55 vacant posts which could vary. Members of the West Bengal Judicial Service,
 having not less than 5 years qualifying service were eligible to apply. There was a subsequent notification issued on 15th May, 2009, bearing no. 6745-",
 RG which specified:-,
 â??It is notified for general information that 55 posts of District Judges Entry Level will be filled up by Limited Departmental Examination as per time,
 schedule mentioned in the decision of Malik Mazhar Sultanâ??s Case. In terms of the judgment in Brij Mohan Lalâ??s Case, the Additional District",
 Judges appointed on ad hoc promotion from the rank of Civil Judge (Sr. Div) will belong to the cadre of Civil Judge (Sr. Div) till their appointment is,
 regularized in the permanent cadre and in that case their seniority will counted from the date of ad hoc promotion. Accordingly, in connection with",
 filling up of 26 vacant posts from the 50% cadre, all the Judicial Officers now posted on ad hoc promotion as Additional District Judge in the Fast",
 Track Court will come under the zone of consideration in due course. Moreover, since all the 150 Fast Track Court Judges belong to the permanent",
 cadre of Civil Judge (Sr. Div), they may apply for appearing in the Limited Departmental Examination for 2009 along with those who have already",
 applied for. Accordingly, the willing Judicial Officers having eligibility criteria may apply along with 10 copies of their judgment five Civil and five",
 Criminal delivered in May and June, 2008 by 30.05.2009. This notification shall abide by the judgments/orders passed in Malik Mazhar Sultanâ??s",
 case (Civil Appeal No. 1867 of 2006) and W.P. (C) 46 of 2007 now pending before the Honâ??ble Supreme Court.â??,
 6. On 15th April, 2009, two other notifications were issued. Notification no. 5953-RG was for inviting applications from the members of the Bar for",
 participating in the recruitment process in accordance with Rule 26(1)(a) of the

2004 Rules for filling up 16 vacant posts in the cadre of District Judge.,

The number of vacancies, however, could be varied. The next notification bore no. 5954-RG and substantive part of this notification recorded:-",

â??It is notified for general information that out of total 131 vacancies in the cadre of District Judge Entry Level in the West Bengal Judicial Service,"

as declared on 31-03-2009 by this Office Notification No. 5632-R (JS), 26 posts will be filled in 2009 against 50% of the cadre strength meant for",

promotion of the Judicial Officers in the cadre as mentioned in Rule 6(b) read with Rule 26(b) of the West Bengal Judicial (Conditions of Service),

Rules, 2004. This exercise of undertaking of promotion is subject to the result of Malik Mazhar Sultanâ??s case (Civil Appeal No. 1867 of 2006) and",

W.P. (C) 46 of 2007 filed by the West Bengal Judicial Service Association now pending before Honâ??ble Supreme Court of India and without any,

prejudice to the rights of any other person. The panel for such selection by promotion will be made on the basis of merit cum seniority and on passing,

a suitability test in terms of said Rule 26(b) from amongst such Judicial Officers other than District Judges as mentioned in clause (b) of sub-rule (1),

of rule 6 of the said rules and in accordance with the solemn order dated 4.1.07 passed by Honâ??ble Supreme Court in Civil Appeal No. 1867 of,

2006 as subsequently modified. The number of such vacancy may vary consequent upon directions to be given by the Honâ??ble Supreme Court in,

both the aforesaid cases.â??,

7. Prior to promulgation of the 2004 Rules, 67 vacancies in the regular cadre of the West Bengal Higher Judicial Service occurred during the period",

between 1st August, 1991 and 30th September, 2004. These vacancies were filled up by a resolution of the Administrative Committee of the Court",

passed on 10/11 July 2006. This resolution was approved by the Full Court on 19th July, 2006. In the month of December 2006, the High Court",

Administration had issued a notification inviting applications for filling up 51 posts of District Judge (Entry Level). Legality of this exercise was,

challenged in a writ petition instituted in the Honâ??ble Supreme Court of India under Article 32 of the Constitution of India brought by the West,

Bengal Judicial Service Association (Writ Petition No. (C) 46 of 2007). In that writ petition the Honâ??ble Supreme Court was pleased to pass an,

order directing that out of the 51 posts, only 16 posts could be filled up through

the process of direct recruitment. In the recruitment process",
undertaken thereafter none of the candidates however had succeeded.,

8. As we have already recorded, three notifications were issued on 15th April, 2009 for filling up the vacant posts of District Judge (Entry Level). The",
Notification no. 5952RG was for filling up 55 vacant posts in the said cadre by promotion strictly on the basis of merits through limited competitive,
examination. The next one, being Advertisement No. 5953-RG was for recruiting directly from amongst the members of the Bar through an open",
examination process. Vacancies advertised were 16 but the advertisement stipulated that the numbers were likely to vary subject to the result of the,
Writ Petition No. (C) 46 of 2007. For promotion of the in-service Judicial Officers in accordance with Rule 26(1)(b) of the 2004 Rules there were 26,
stipulated vacancies in notification no. 5954-RG.,

9. So far as in-service Judicial Officers are concerned, a merit wise panel was published on 1st September, 2009 on conclusion of the promotion",
process on the basis of merit-cum-seniority suitability test. Thereafter on 17th September, 2009, names of 26 promotee officers were notified. The",
substantive content of this notification read:-,

â??The Governor is pleased to appoint the following 26 (Twenty-six) Officers in the cadre of District Judge (Entry Level) in the West Bengal Judicial,
Service by way of normal promotion from amongst the eligible Officers of the West Bengal Judicial Service in the scale of pay of RS. 16750-
40019150-450-20500/- (unrevised)â??,

10. On 17th September itself another appointment notification was issued bearing no. 6539-J/JD/1J-04/09 in respect of 5 Officers who had,
participated in the limited competitive examination in terms of Rule 26(1)(c) of the 2004 Rules. The substantive part of this notification stipulated:-,

â??The Governor is pleased to appoint on promotion the following 5 (Five) Officers from amongst the eligible Judicial Officers of the West Bengal,
Judicial Service who have been found suitable by way of limited competitive examination to the cadre of District Judge (Entry Level) in the West,
Bengal Judicial Service in the scale of pay of Rs. 16750-400-19150450-20500/- (unrevised) in view of the decision of the Honâ??ble Supreme Court,
passed in the Writ Petition (C) No. 490 of 2007.â??,

11. In the case of the 16 (sixteen) writ petitioners, who are direct recruits to the subject post, their appointment notification came on 23rd September,"

2009, bearing no. 6617-J/JD/1J-04/2009. This notification specified:-",

â??The Governor is pleased to appoint the following 16 (sixteen) persons, who have been recommended by the Honâ??ble High Court, Calcutta",

from amongst the members of the Bar, as District Judge (Entry Level) in the West Bengal Judicial Service on temporary and provisional basis for a",

period of three months pending Police Verification Report and the Medical Examination Report in terms of Rule 26 of the West Bengal Judicial,

(Condition of Services) Rules, 2004 and in compliance with the order of the Honâ??ble Supreme Court in the Writ Petition (C) No. 490 of 2007.â??",

12. The posting orders were made in respect of the judicial officers from the three streams on 28th October, 2009, but through two notifications. By",

notification no. 8846-A, thirty-one officers, who at that point of time were working in the capacity of Additional District and Sessions Judge, Fast",

Track Courts and Civil Judge (Senior Division), were posted in the places mentioned against each of them in that notification. Two incumbents whose",

names appeared against Serial no. 27 and 30 in that notification, were working as Civil Judge (Senior Division) at that point of time. The names of",

these officers were given in a tabular format in the notification.,

13. The posting orders of the direct recruits were made by notification no. 8847-A issued on the same day i.e. 28th October, 2009 and the substantive",

part of this notification recorded:-,

â??It is hereby notified that the following sixteen (16) Candidates recruited by way of direct recruitment from amongst the Members of the Bar are,

posted on probation as Additional District & Sessions Judge in the cadre of District Judge (Entry Level) in the West Bengal Judicial Service on,

temporary and provisional basis pending Police Verification Report and the Medical Examination Report in the respective District Head Quarters,

under which they reside (except the candidate under Serial No. 7) as mentioned against each of them.â??,

14. The decision of the Honâ??ble Supreme Court in the All India Judgesâ?? Association case (supra) mandated adoption of roster system as a,

measure for avoiding litigation in implementing the quota vis-a-vis the three streams from which recruitment is to be made in the subject posts. First,

proviso to aforesaid Rule 31 also contemplates application of 40 point roster as determined by the High Court from time to time. The roster system in,

Andhra Pradesh model, however, was adopted by the Administrative Committee in its meeting held on 6th December, 2010. As per this model, the",

first position in the roster goes to a direct recruit, second position to a jump promotee and the third and fourth positions go to normal promotees. The",

fifth position is to be filled up by a direct recruit, sixth to a jump promotee and the next two positions again go to normal promotees. This cycle goes on",

till the 40th vacancy. It was decided by the Administrative Committee in the said meeting :-,

â??Taking into consideration the decision of the Supreme Court rendered in the case of All India Judgesâ?? Association & Ors. vs. Union of India,

[Writ Petition (Civil) No. 1022 of 1989], it is decided to apply 40- point Roster as adopted by the High Court of Andhra Pradesh for the purpose of",

fixation of seniority inter se amongst the Higher Judicial Service Officers in the rank of District Judge (Entry Level) in all the three categories, viz., by",

way of direct recruitment from Bar, by way of limited competitive examination and through normal promotion, prospectively with effect from the year",

2009.â??,

15. The next recruitment process started on 30th March, 2010 in a respect of 90 vacancies out of which 45 posts were to be filled up through normal",

promotion and 23 posts were to be filled up by way of direct recruitment. The vacancy notification was made on that date under notification no. 3192-,

R (JS) issued by the High Court Administration. This was followed by notification no. 3489-R(JS), which laid down the process for filling up the 45",

posts on the basis of merit-cum-seniority. By another notification [no. 4490-R(JS)], a list of officers who came within the zone of consideration was",

published on 14th March, 2010 and this was followed by publication of panel of officers who had been called for viva voce test. Such process was",

followed in respect of candidates from the other streams as well. A common gradation list prepared by the High Court in respect of officers,

appointed/posted in the cadre of District Judge (Entry Level) by way of 3 channel recruitment process for the year 2009, 2010 so on was prepared in",

the year 2010. A copy of this gradation list has been annexed to the affidavit-in-opposition on behalf of the respondent nos. 34 and 35. The writ,

petition, registered as W.P. 22564(W) of 2011, was instituted by 22 promotee-officers challenging the said draft gradation list.",

16. Grievance of the writ petitioners made out in that case was that in that gradation list, the judicial officers who were promoted to the cadre of",

District Judge and posted in the Fast Track Courts since March 2003-2004 were shown junior to the officers recruited directly as also to those,

promoted through limited competitive examination. The petitioners in that proceeding wanted their tenure as Judges of the Fast Track Court to be,

treated to be regular posting in the cadre of District Judge for computing their seniority. In an earlier proceeding before this Court, a batch of judicial",

officers belonging to the cadre of Civil Judge (Senior Division) who were functioning as Additional District Judges posted in Fast Track Courts on the,

basis of ad-hoc promotion had assailed legality of an examination process for promotion to the rank of District Judge through limited competitive,

examination. In that writ petition, registered as W.P. No. 13020(W) of 2009, direction was sought to the effect that the petitioners therein who were",

given ad-hoc promotion as Additional District and Sessions Judge to man the Fast Track Courts should not be required to face the suitability test again,

and their service should be regularised in the rank of District Judge.,

17. That writ petition was dismissed by one of us (Aniruddha Bose, J.) relying on several authorities including the decision of the Honâ??ble Supreme",

Court in the case of Brij Mohan Lal Vs. Union of India & Ors. [(2002) 5 SCC 1]. The said judgment was upheld by a Bench decision delivered on,

22nd December, 2011 (M.A.T No. 846 of 2009 â?? Sri Tapan Kumar Das Vs. The High Court at Calcutta & Ors.) Subsequently, another draft",

gradation list for the officers in different cadres of the West Bengal Judicial Services, as on 31st December, 2011 was circulated by the Registrar",

(Judicial Service) of this Court. The letter dated 4th April, 2013, which was circulated, recorded:-",

â??I am directed to circulate the draft Gradation List as on 31.12.2011, for the officers in the different Cadres of the WBJs, amongst all the officers",

Matter,How disposed of

Discussion on the draft gradation list of the Judicial

Officers in the Cadre of District Judge.", "The Administrative Committee in its meeting dated

3rd and 4th November, 2016 had resolved that in supersession of the earlier gradation list published on 4th April, 2013 the fresh gradation prepared shall be published inviting objections if any. The aforesaid resolution was the subject matter of deliberation. The draft gradation list of the cadre of District Judge (Entry Level) was prepared in accordance with the mandate of the Full Court with respect to the vacancies which arose from 1st October, 2004 to 31st December, 2008 by the Administrative Committee in a meeting held on 3rd November, 2016.

, "The minutes of the meeting of the Administrative Committee were circulated amongst all the Hon'ble Judges for obtaining their views, if any, with regard to the draft gradation list. Hon'ble Justice Sanjib Banerjee, Hon'ble Justice Joymalya Bagchi, Hon'ble Justice Subrata Talukdar and Hon'ble Justice Siddhartha Chattopadhyay submitted their objections to the draft gradation list. Hon'ble Justice Dipankar Datta also submitted an objection today. The draft gradation list prepared by the Administrative Committee was placed before the Full Court with objections received. Hon'ble Justice Sanjib Banerjee was of the view that the date from which the officers are entitled to be confirmed in the permanent post of District Judge (Entry Level) could not be prior to the date that they actually worked. Hon'ble Justice Joymalya Bagchi objected to the

draft gradation list stating that it had been drawn up contrary to the provisions of the of the west Bengal Judicial (Conditions of Service) Rules, 2004 (more particularly Rule 31).

Justice Dipankar Datta submitted his objections by pointing out that several important documents relating to the issue had not been brought to the notice of the Administrative Committee when it drafted the gradation list nor had they been placed before the Full Court in the meeting held on 27th September, 2006. These documents included the earlier decisions of the Full Court with respect to the non-grant of the promotions to the District Judge (Entry Level) between 2004 and 2008 to the Judicial Officers, the decisions of sub-committees relating to the issue and the affidavits filed by the Registrar General on behalf of the Calcutta High Court in proceedings before the Supreme Court of India in Writ Petition (C) No. 46 of 2007.

He therefore suggested that the earlier gradation list should not be altered. Considering that each member placed in the subject gradation list has been officiating continuously in service long before appointment of the direct recruits and considering further that such a member has the first claim to seniority as per Rule 31(1)(a) of the West Bengal Judicial (Conditions of Service) Rules, 2004 it was decided by a majority of the Full Court that the column in the draft gradation list with the heading 'Date from which the officer is entitled to be

confirmed in the permanent post of District Judge (Entry Level) should be deleted.

The Full Court by a majority therefore resolved to accept the gradation list excluding the aforesaid column and further that necessary changes therein arising out of clerical error may be effected.

Honorable Justice Nishita Mhatre, Honorable Justice Dipankar Datta, Honorable Justice Sanjib Banerjee, Honorable Justice Joymalya Bagchi, Honorable Justice Subrata Talukdar and Honorable Justice Arijit Banerjee voted against the resolution. The draft gradation list shall be published on the website of the Calcutta High Court and objections, if any, may be invited within 15 days of its the officers from 2009 onwards will be published in due course of time. This may kindly be treated as important and urgent.

20. The draft gradation list forming part of this memorandum showed the names of 85 officers and was based on 85 vacancies that occurred between,

1st October, 2004 and 31st August, 2008. The writ petitioners as also the jump promotees, who had participated in the 2009 recruitment process were",

excluded from this gradation list. It is this memorandum, which the writ petitioners have described as circular letter, with the draft gradation list was",

challenged by the writ petitioners in the proceeding out of which this appeal arises. The writ petitioners who are respondent nos. 1 to 18 in this appeal,

wanted the 2016 gradation list to be quashed and they also sought for direction from the learned First Court upon the High Court Administration for,

finalisation of the draft gradation list circulated on 4th April, 2013. Other prayers made in the writ petition were in aid of these two substantive",

prayers. The main argument of the writ petitioners before the learned First Court was that the draft gradation list prepared in 2016 was not in,

adherence of the 2004 Rules and the Andhra Pradesh model roster system had been breached.,

21. The learned First Court formulated five points for determination in the writ

petition in the form of issues. These were :-,

- i) Is the writ petition not maintainable as being premature?,
- ii) Does the 40 Point roster read with Andhra Pradesh model apply for the purpose of fixation of seniority inter se amongst the appointees to the post, of District Judge (Entry Level)?,
- iii) Is the seniority to be reckoned from the date of appointment/promotion or from the date of posting as a District Judge (Entry Level) under the, Rules of 2004?,
- iv) Is the draft gradation list circulated by the impugned letter circular in accordance with the Rules of 2004?,
- v) To what reliefs, if any, are the parties entitled to?",

22. The learned First Court found the writ petition maintainable. On the promotee officers' claim that their seniority ought to be computed from, the date they started officiating as Fast Track Court judges, the learned First Court held that they could not claim seniority on the basis of such", officiation in ad-hoc posts. Dealing with the question of applicability of the roster system, the learned First Court held that the seniority of the officers", ought to be reckoned from their dates of appointment being 28th October, 2009 to the post of District Judge (Entry Level) and the roster system would", have to be followed. The Learned First Court invalidated the draft gradation list of 2016 which was assailed in that writ petition. Liberty was given to, the High Court Administration for preparing a gradation list for all the appointees of 2009 to the post of District Judge (Entry level) by taking their date, of appointment to such post as 28th October, 2009. It was also directed in the decision under appeal that the appointees of 2010 would come after the", appointees of 2009 in such gradation list. The segregation of vacancies between pre and post 31st August 2008 was not accepted by the Learned First, Court.,

23. Mr. Pratik Dhar, learned Senior Counsel appearing for the nine appellants, who are all promotee officers, has anchored his argument primarily on", two points. The first one is that the officiating period of his clients as Fast Track Court judges on ad hoc basis ought to be taken into account for, determination of their seniority. Relying on several authorities to which we shall revert to later in this judgment, he wants us to reverse the finding of",

the learned First Court on this count. Secondly, argument of the appellants has been that the roster system would not apply in respect of the three",

channels of appointment undertaken in the year 2009 as these officers were not appointed on the same date. He drew our attention to first proviso of,

Rule 31 to sustain his argument on this point. The other argument which has been advanced before us in support of the appellants' case is that the,

Full Court decision could not be overturned to create a new methodology for preparing the gradation list, referring to the judgment of the Hon'ble",

Supreme Court in the case of High Court of M.P. Vs. Mahesh Prakash (AIR 1994 SC 2595). Mr. Joydip Kar, learned Senior Counsel has appeared",

on behalf of the High Court Administration and contested the first plea of the appellants that their period of officiation as ad-hoc judges in the Fast,

Track Courts ought to be computed for determining their seniority in the cadre of District Judge.,

On the second plea as regards applicability of the roster, Mr. Kar's submission has been that as per the first proviso to Rule 31, the roster system",

could not be made applicable and in this case the seniority of the respective judicial officers has to be determined on the basis of their dates of,

appointment as they were appointed on different dates. Mr. Saktinath Mukhopadhyay, learned Senior Counsel, has appeared on behalf of the directly",

recruited officers, who were the writ petitioners before the learned First Court. His submission is that the roster had become applicable upon the 2004",

Rules having become operational. He has sought to distinguish between the dates of appointment and dates of posting of the respective judicial,

officers and the argument advanced by him has been that birth in a cadre takes place only on posting and not on selection. He has defended the,

judgment under appeal. Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel has appeared on behalf of respondent Nos. 26 and 27, both of",

whom are jump promotee officers. He has argued that the vacancies are to be filled up annually and 40 Point roster and such roster has to be,

maintained for annual appointment or recruitment process. He has adopted Mr. Mukhopadhyay's stand that individual dates for promotion would,

not constitute a relevant factor and promotion from all the three streams ought to be filled in compositely as an annual exercise. Mr. Anindya Lahiri,",

learned Counsel appearing for respondent No. 24 has submitted that the decision of the learned Single Judge in W.P. No. 22564(W) of 2011,

confirmed the legality of the gradation list circulated in 2013 and as a consequence thereof the Full Court decision to prepare the draft gradation list, and the list prepared in pursuance thereof ought to stand automatically negated. His client, respondent No. 32 in this appeal (Smt. K.D. Bhutia) is also", a jump promotee.,

Â 24. Not much argument has been advanced before us on the part of the judgment by which the learned First Court opined that the writ petition was, maintainable. We also concur with the view of the Learned First Court on this point. The argument that the Full Court decision could not be, overturned subsequently by another Full Court does not appeal to us. The decision in the case of Mahesh Prakash (supra) does not lay down the law, in absolute terms on that point. This judgment, dealt with the decision of the Full Court of the Madhya Pradesh High Court on the question", confirmation of a judicial officer in the year 1974 which was sought to be reopened in 1985. Such proposal which was rejected by the Full Court. It, was in this perspective it was observed in this judgment :,

â??It is undesirable and unsafe for one Full Court to revise the decision taken by an earlier Full Court, particularly in cases of promotions,", confirmation, suppression and the like.â??",

In any event, no prior Full Court decision mandating preparation of the gradation lists which surfaced in 2011 or circulated in 2013 has been brought to", our notice. Thus, on facts also, ratio of the said decision does not apply to the case before us.",

25. In this case sufficient discussion took place before the decision of the Full Court was taken and the Full Court decision also has not been, questioned in the writ petition on the ground of being in breach of the â??precedentâ? principle, which in any event does not apply in administrative", matters. It has also been argued on behalf of the judicial officers, whose names have been excluded from the 2016 gradation list that the judgment of", the learned Single Judge in W.P. No. 22564(W) of 2011 has confirmed the gradation list circulated in 2013. But in our opinion dismissal of the writ, petition by which the said gradation list was challenged does not foreclose the power or authority of the Full Court to alter or even replace such list, upon fresh consideration of relevant factors. Such dismissal alone does not operate as bar upon the Full Court to revisit the matter in exercise of its,

administrative power. In that decision, considering the plea of the writ petitioners therein, the challenge to the gradation list was repelled. But the",

finding of the Court could not have had taken away the power or authority of the High Court on the administrative side to replace or alter the same on,

certain other ground. The legality of those fresh grounds can always be tested and in the writ petition as also before us, argument has been advanced",

on legality of the decision of the Full Court. We, thus, are unable to accept this plea of res judicata in the administrative decision making process.",

26. Now we shall examine the question as to whether supersession of the earlier gradation list was legal and valid, as was found by the learned First",

Court. Mr. Dhar wants the seniority of his clients to be computed from the date they were promoted on ad-hoc basis as Additional District and,

Session Judge. If that date is treated to be the relevant date, then all the appellants would come above the writ petitioners in the seniority list if such a",

list includes all the 2009 appointees. He has referred to the decisions of the Supreme Court in the cases of Baleswar Dass Vs. State of U.P. [(1980) 4,

SCC 226], G.P. Doval and Ors. Vs. Chief Secretary, Government of U.P. and Ors. [(1984) 4 SCC 329], O.P. Singla and Anr. Vs. Union of India and",

Ors [(1984) 4 SCC 450], Union of India and Ors. Vs. Pratap Narain and Ors. [(1992) 3 SCC 268], Rudra Kumar Sain and Ors. Vs. Union of India",

and Ors. [(2000) 8 SCC 25], Debabrata Dash and Anr. Vs. Jatindra Prasad Das and Ors. [(2013) 3 SCC 658] and V. Venkata Prasad and Ors. Vs.",

High Court of Andhra Pradesh and Ors. [(2016) 11 SCC 656] in support of his submissions on this point. Submissions of the opposing respondents on,

this issue has been that ad hoc appointment in ex-cadre posts do not confer any such right. It is not in dispute that the posts in which the writ,

petitioners discharged their duties as Fast Track Court Judges were all ex-cadre posts.,

Â 27. On this issue the learned First Court has held :-,

â??A large section of the respondents have traced their rights to a preferential treatment in the gradation list as officers of FTC. Reliance has been,

placed on O.P. Singla & Anr. (supra), Rudra Kumar Sain & Ors. (supra), Debabrata Dash & Anr. (supra) and Brij Mohan Lal (supra). This issue of",

rights emanating from an officiation as officers of FTC was raised in W.P. No. 22564(W) of 2011 and negated by the judgment and order dated,

August 16, 2016, passed therein. An appeal is pending against such judgment and order. The Rules of 2004 governs the seniority amongst the",

members of the cadre of District Judge (Entry Level). Officers of FTC are not considered as a post within the cadre of District Judge (Entry Level).,

The Rules of 2004 do not permit services rendered in ex-cadre post to be taken into consideration for the purpose of fixation of seniority.,

Consequently, such persons cannot claim seniority on the basis of officiation at the FTC. The decisions relied upon by such respondents have no",

manner of application in the facts of the present case. Direct Recruit Class II Engineering Officers's Association [(1990) 2 SCC 715] has held,

that, where appointment has been made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the",

date of confirmation. It has also held that, where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the",

officiation in such post cannot be taken into account for considering the seniority.â??,

28. In Baleswar Dass (supra), officiating service in temporary posts was recognized for computing seniority in U.P. Service of Engineers (Irrigation",

Branch). But the applicable Rules provided that a cadre post could be permanent or temporary. In the case of G.P. Doval (supra) dispute arose on the,

question of inter se seniority amongst khandsari inspectors in the State of Uttar Pradesh. The question arose as regards seniority applying the rule of,

continuous officiation but this decision does not lay down any clear cut principle of law. It has been observed in this decision that each case would,

depend upon its facts and circumstances after holding that once a person appointed in a stopgap arrangement is confirmed in his post by proper,

selection, his past service has to be given credit and he has to be assigned seniority accordingly unless a rule to the contrary is made. It was also held",

in this decision :-,

â??.....It may be permissible, within limits for Government to ignore officiating service and count only regular service when claims of seniority",

come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years",

of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of postsâ??.",

29. The case of O.P. Singla (supra) arose out of a dispute of similar nature in Delhi Higher Judicial Service. In this case also the question of,

continuous officiation being the starting point for counting seniority arose. This decision was delivered in the light of the provisions of Delhi Higher,

Judicial Service Rules, 1970 and the definition of cadre post therein included a temporary post. In this decision also it was inter alia held:-",

â??27. Thus, persons belonging to the Delhi Judicial Service who are appointed to temporary posts of Additional District and Sessions Judges on an",

ad hoc basis or for fortuitous reasons or by way of a stopgap arrangement, constitute a class which is separate and distinct from those who are",

appointed to posts in the Service in strict conformity with the rules of recruitment. In view of this, the former class of promotees cannot be included in",

the list of seniority of officers belonging to the Service.â??,

30. In the case of Pratap Narain (supra), a dispute which stood finally settled by the Honâ??ble Supreme Court in an earlier judgment. The dispute",

had been reignited and in this decision the Honâ??ble Supreme Court found that in the earlier judgment in the case of Narender Chadha Vs. Union of,

India [(1986) 2 SCC 157] the Honâ??ble Supreme Court found that no distinction was made between cadre and ex-cadre post and the judgment was,

delivered in special facts of that case. The Constitution Bench judgment of the Honâ??ble Supreme Court in the case of Rudra Kumar Sain dealt,

with the seniority claims of judicial officers on the basis of continuous officiation. But in this case also appointments had been made under relevant,

rules of the Delhi Judicial Service which permitted filling up of substantive vacancies in the service by making temporary appointments thereto from,

amongst the members of the Delhi Judicial Service. In Debabrata Dash (supra), the plea of the concerned judicial officer for seniority on the basis of",

service rendered by him in the Fast Track Court was not accepted. Mr. Dhar however brought to our notice the following passage from Paragraph 44,

of the report :-,

â??In our opinion, until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the",

service rendered by the writ petitioner in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service (Senior,

Branch). Rather until then, he continued to be a member of the parent cadre i.e.

Superior Judicial Service (Junior Branch). The third part of Direction",

14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules.â??",

31. In the case of V. Venkata Prasad and Ors. (supra) reference was made to the judgment in the case of O.P. Singla (supra) that no distinction ought, to be made between temporary posts and substantive vacancies in a temporary capacity. We have already dealt with the ratio of O.P. Singla (supra)., Neither of these two authorities come to the aid of the appellants. The above referred passage in the case of Debabrata Dash (supra) in our view, does not apply in the facts of this case as the 2004 Rules do not contemplate according seniority to an officer from the date of accrual of vacancy., The decision in the case of Debabrata Dash (supra) was delivered in the light of the provisions of Orissa Superior Judicial Service Rules, 1963. In the", case of Ajit Kumar Rath Vs. State of Orissa (AIR 2000 SC 85), ad-hoc service of the incumbent involved in the case was directed to be counted for", computing seniority. But the ad-hoc promotion of the incumbent therein was made in accordance with Rules in permanent vacancy. But beyond these, authorities, where the case of the appellants fails on this point is a specific directive contained in the decision of the Honâ??ble Supreme Court in the", case of Brij Mohan Lal (supra). This judgment dealt with the issue of continuance of Fast Track Court scheme beyond the originally specified period, and laid down 18 point guideline in relation to operation of the said Courts, which also covered appointments to the Fast Track Courts. There were 18", sets of directions issued by the Honâ??ble Supreme Court and the 14th direction was :-,

Â 14. No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her appointment on ad hoc, basis under the Scheme. The service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In case any judicial, officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be", deemed to be service in such higher grade.â??,

32. This direction has also been reaffirmed in the case of V. Venkata Prasad (supra). Because of the said 14th Directive, the distinction made in", Baleswar Dass (supra) between short temporary posts and temporary posts of

long duration to which incumbents are appointed substantively cannot, apply in respect of ad hoc appointees as Fast Track Court judges. They cannot be entitled to the benefits similar to that mandated in the decision of, Baleswar Dass (supra). In Brij Mohan Lal Vs. Union of India and Ors. [(2012) 6 SCC 502], the Honâ??ble Supreme Court re-examined the", questions of the policy of appointment of ad hoc judges of the Fast Track Courts and also continuance of the Fast Track Court schemes. In this, judgment certain directions have been issued in exercise of jurisdiction of the Honâ??ble Supreme Court in terms of Article 142 of the Constitution., Our attention has been drawn to Paragraph 207.13 of the said report, in which it has been directed by the Honâ??ble Supreme Court:-",

â??207.13. The candidates from any State, who were promoted as FTC Judges from the post of Civil Judge, Senior Division having requisite", experience in service, shall be entitled to be absorbed and remain promoted to the Higher Judicial Services of that State subject to:",

(a) Such promotion, when effected against the 25% quota for outof-turn promotion on merit, in accordance with the judgment of this Court in All India", Judgesâ?? Assn. (3), by taking and being selected through the requisite examination, as contemplated for out-of-turn promotion.",

(b) If the appointee has the requisite seniority and is entitled to promotion against 25% quota for promotion by seniority-cum-merit, he shall be", promoted on his own turn to the Higher Judicial Services without any written examination.,

(c) While considering candidates either under Category (a) or (b) above, due weightage shall be given to the fact that they have already put in a", number of years in service in the Higher Judicial Services and, of course, with reference to their performance.",

(d) All other appointees in this category, in the event of discontinuation of the FTC Scheme, would revert to their respective posts in the appropriate", cadre.â??,

33. This decision also does not lay down that seniority of Fast Track Court Judges in ad-hoc employment would have to be counted from the dates on, which they were appointed as Additional District Judge on ad-hoc basis for manning the Fast Track Courts. The decisions of O.P. Singla (supra), G.P.", Doval (supra) or Pratap Narain (supra) were not delivered in a situation where

there was a mandate similar to that contained in Directive No. 14 in, the case of Brij Mohan Lal reported in [(2002)5 SCC1]. In our view, taking into account the aforesaid Directive, the expression "continuous", officiation", as employed in first proviso to Rule 31 would have to be officiation in a substantive or cadre post. We are conscious of the fact that the", appeal against the judgment of the learned Single Judge in W.P. 22564(W) of 2011 is pending. This appeal, in fact, is pending before us. But", foundation of that writ petition is different from the point argued before us. In that writ petition, the petitioners wanted the Court to hold that their", original appointment as Fast Track Court Judges were regular appointments and their promotion was not ad hoc promotion. In this appeal, the", appellants have argued before us that they, in any event, ought to be given the benefit of officiation period for computing their seniority. We have", addressed this issue independently after detailed arguments from all the appearing parties were advanced before us. Thus we do not find any reason, to interfere with the learned First Court's finding and views on this point.,

34. Next comes the question of applicability of the roster and if the roster is applicable, the manner in which the same shall be applied in the facts of", this case. The requirement of following the roster system has been mandated by the Hon'ble Supreme Court in the case of All India Judges' Association (supra). In the judgment of R.K. Sabharwal & Ors. Vs. State of Punjab and Ors. [(1995) 2 SCC 745], which was referred to in the case", of All India Judges' Association (supra) the manner in which roster should operate has been explained. This was, however, a case on reservation", for members of the Scheduled Castes and Backward Classes and the roster was to operate in that context. It was held in this judgment:-,

".....The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the, Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the, impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts....." are reserved for members of, the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91", have been reserved and earmarked in the roster for the Scheduled Castes.

Roster points 26 and 76 are reserved for the members of Backward, Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of, the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and", onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned, instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward", Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster, thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once, the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of, reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the, proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due, application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster", to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the, "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As", and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the, post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled", from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these", slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of, reservation.â??,

35. In Union of India Vs. S.D. Gupta [AIR 1996 SC 3325] it has been held that

when inter se seniority is to be determined between two groups of, candidates their fitment in the order of seniority ought to be determined with reference to rota and quota prescribed under the administrative, instructions.,

36. In the case of P.S. Ghalaut Vs. State of Haryana & Ors. [(1995) 5 SCC 625] primacy of roster position and fitment according to roster has been, emphasized. In H.V. Pardasni Vs. Union of India [(1985) 2 SCC 468] also, adherence to quota system has been mandated. In Paragraph 21 of its", own affidavit-in-opposition in W.P. No. 22564(W) of 2011, the High Court administration has acknowledged its subsistence. The argument for", excluding the vacancies which occurred prior to commencement of 2004 Rules on the ground that these Rules should have prospective operation, cannot be accepted as after these Rules became operational, in our opinion all vacancies ought to be filled up in the manner provided therein. We do", not think these Rules can have such truncated application.,

37. On the question of applicability of the roster rule, learned First Court opined:-",

â??The Administrative Committee had adopted the Andhra Pradesh model in preference over the Orissa model for the purpose of fixation of, seniority. The Andhra Pradesh model grants the first position to a direct recruit, the second to a jump promotee, the third and the fourth to normal", promotees, the fifth to a direct recruit, the sixth to a jump promotee and the seventh and eighth positions to the normal promotees. This system is", followed till the 40th vacancy. The High Court administration in an affidavit filed before the Supreme Court in W.P. (C) No. 46 of 2007 (West Bengal, Judicial Service Association v. Registrar General, High Court of Calcutta & Anr.) has stated that:-",

Â â??10. It is stated that presently the seniority has been determined as per 40 points roster as adopted in Andhra Pradesh and it has been decided to, follow the said roster as per direction issued in the case of All India Judgesâ?? Association Vs. Union of India (Reported in (2002) 4 SCC 247).â??, The stand of the High Court administration is that, the 40 Point Roster system read with Andhra Pradesh model applies for the purpose of fixation of", seniority inter se amongst the appointees to the post of District Judge (Entry Level). This stand has not been substantiated by any of the parties to be,

incorrect. Rule 31 of the Rules of 2004 in its first proviso provides that the 40 point roster system would be followed for the purpose of determination,

of the inter se seniority. Therefore, the second issue is answered by holding that, the 40 Point Roster system read with the Andhra Pradesh model",

would apply for the purpose of fixation of seniority inter se amongst the appointees to the post of District Judge (Entry Level).â??,

38.The competing claims in this appeal is for treating officiation period of the promotee officers for determining their seniority on one hand and that of,

jump promotees and direct recruits on the other for implementation of the roster system straightaway. In the event the roster system is applied,

covering appointments made in the year 2009 from all the three streams, then the latter category would find their fitment as per the roster position.",

That is what, in substance, the learned First Court has directed. The reasoning of the learned First Court on application of roster is based on two",

planks. The learned First Court has held that the date of posting (i.e. 28th October 2009) should be the common date to be the starting point for,

computing seniority of the officers of all the three streams and in such a situation, the roster system would have to be invoked. Citing the decision of",

the Honâ??ble Supreme Court in the case of All India Judgesâ?? Association (supra) the learned First Court has opined:-,

â??.....Even if the appointment, promotion or selection does not culminate on a single day, then also, in view of the direction quoted from All India",

Judgesâ?? Association & Ors. (supra), the recruitment being annual and happening on the basis of a quota, the roster system is to be followed, in",

determining inter se seniority, irrespective of the actual date of appointment, promotion or selection.â??",

39.The selection process of the judicial officers in the cadre of District Judge is guided by the 2004 Rules. Validity of these Rules was not under,

challenge in the writ petition. Thus, for adjudicating the competing claims of the three sets of judicial officers, steps taken by the High Court",

Administration would have to be tested by referring to these Rules. The learned First Court has construed the said Rules, inter alia, in the following",

manner:-,

â??Rule 31 of the Rules of 2004 dealing with seniority requires determination of seniority for all the three avenues of appointment to be made from,

the date of promotion to the post, date of selection to the post as District Judge (Entry Level) or the date of appointment to the post of District Judge",

(Entry Level) as the case may be. In the present case, the promotion, appointment and selection to the post of District Judge (Entry Level) had",

happened on October 28, 2009. In terms of the first proviso to Rule 31 of the Rules of 2004, the inter se seniority must be fixed in accordance with the",

40 Point Roster system as determined by the High Court. The High Court had determined the 40 Point Roster system read with the Andhra Pradesh,

model as discussed above. The impugned letter circular containing the draft gradation list is not in accordance with the 40 Point Roster system read,

with the Andhra Pradesh model.,

S.S. Uppal & Ors. (supra), Uttaranchal Forest Rangers Assn. (Direct Recruits) & Ors. (supra) and C. Lalitha (supra) have held that, the",

seniority has to be determined by the Rules in force on the date of appointment. The fixation of seniority follows the appointment to the service. The,

date of occurrence of a vacancy has no relevance for the purpose of fixation the seniority. Ajit Kumar Rath (supra) has held that seniority cannot be,

claimed from the date of the vacancy. An appointment to the post does not relate back to the date of occurrence of the vacancy. The appointing,

authority under the Rules of 2004 is the Governor acting on the recommendation of the High Court. The selections to the post are, however, to be",

made by the High Court. In the facts of the present case, the selections to the post were made by the High Court on October 28, 2009 for all the three",

streams of appointment.â??,

40. We are, however, unable to agree with this reasoning of the learned First Court. First part of Rule 31 lays down different criteria for setting the",

starting point for seniority computation of the two sets of judicial officers who could be appointed to the post of District Judge (Entry Level). For,

promotee officers, it would be the dates of their continuous officiation and for direct recruits, dates of their orders of appointment. The 2004 Rules do",

not lay down that all appointments made in the subject posts in a particular year irrespective of the dates of appointment would have to be guided by,

the roster. This would be apparent from the first proviso to Rule 31. This Rule lays down a specific situation in which the 40 point roster would cover,

different sets of judicial officers, as reference has been made to clauses (a), (b)

and (c) of sub-rule (1) of Rule 26. Sub-clause (a) of Rule 31(1)", stipulates that for promotee officers, the date of continuous officiation would be the relevant date. For direct recruits, it would be the date of order of", appointment. The Rule does not directly specify in what manner the respective seniority would be fixed in a common gradation list for a particular, year for officers entering the cadre from all the three streams. Application of roster is stipulated in the first proviso to Rule 31 only in a situation where, the date of continuous officiation of higher judicial officer in the rank of district judges promoted to such post and the date of joining/appointment of the, direct recruit in the service be the same. There is no other provision in the Rules on applicability of the roster even after 2010, when the Andhra", Pradesh model was adopted. In the case before us, we have rejected the plea of the appellants that their tenure starting from the dates of their ad hoc", promotion as Fast Track Court judges till their appointment as officers in the cadre of District Judge ought to be treated as continuous officiation., Thus, the dates of their entry into the cadre ought to be treated as the first date for computing their seniority. In this case, 17th September, 2009 is the", date on which their appointment by the Governor was notified. This is for the promotee officers who reached the cadre in 2009. The notification, recorded their appointment in the said cadre by way of normal promotion. So far as jump promotees are concerned, their appointment by the Governor", was also made on the same day, i.e. 17th September, 2009. The notification for appointment of sixteen Judicial Officers who were directly recruited", was issued on 23rd September, 2009.",

41. In our opinion, the learned First Court erred in treating the common dates of their posting as the dates of their birth in the cadre, ignoring their dates", of appointment. If that was the case, then the roster system would have had applied and respective officers could have been fitted in their respective", positions in the roster. The dates of their posting cannot be treated as their birth dates in the cadre. Mr. Mukhopadhyay wants us to equate the order, of appointment without posting with vacancy, treating the same as recommendation, relying on the following passage from the case of R.K.", Sabharwal (supra):-,

“6. The expressions “posts” and “vacancies”, often used in the executive instructions providing for reservations, are rather”,

problematical. The word "post" means an appointment, job, office, or employment. A position to which a person is appointed. "Vacancy",

means an unoccupied post or office. The plain meaning of the two expressions made it clear that there must be a "post" in existence to enable,

the "vacancy" to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for,

appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to,

the number of posts which form the cadre-strength. The concept of "vacancy" has no relevance in operating the percentage of reservation."

42. In the facts of this case ratio of that decision on this particular point would not be applicable. In respect of the opposing sets of judicial officers who,

are contesting in this appeal, appointing authority is the Governor. The Governor is to make appointments in accordance with the recommendation of",

the High Court. This is as per Rule 28 of the 2004 Rules. Under Rule 30, posting is to be made by the High Court. Posting under the 2004 Rules is in",

consequence of the appointment order and after the appointment order is issued, the posts do not retain the character of vacancy in terms of the 2004",

Rules. The appointment notifications to which we have referred to do not qualify such appointments to become operational from the dates the,

incumbents assume charge or are posted. These are cases of appointment simpliciter, and the vacancies to the subject posts closed immediately on",

appointment. In the passage from R.K. Sabharwal (supra) cited by Mr. Mukhopadhyay, an extended meaning of "post" has been given, which",

includes appointment, job, office or employment. After appointments were effected from the three streams, it cannot be contended that there",

remained vacancies in the posts covered by the recruitment process, and the appointment orders remained mere empanelment of those appointed. We",

also do not accept the finding of the learned First Court that in the present case, the promotion, appointment and selection to the District Judge had",

happened on October 28, 2009. Records speak otherwise, as separate notifications were issued for each of these steps."

43. The dates of birth in the cadre of District Judge of the direct recruits and promotee officers being different, as per the first proviso to Rule 31 the",

roster system could not be made applicable. In such a situation, the normal rule of computing seniority has to apply. The promotee officers and the",

jump promotees were appointed on the same day, i.e. 17th September, 2009 whereas the direct recruits were appointed on 23rd September, 2009. The",

difference of days in their respective entries to the cadre is marginal, but the entry dates are different nonetheless. We are of the view that the",

seniority of the respective officers would have to be determined applying the regular seniority principle.,

Â 44. We accordingly dispose of the appeal and the application in the following terms:-,

i) We concur with the finding of the learned First Court that the promotee officers cannot derive the benefit of the period they served as Fast Track,

Court Judges in ex-cadre post for the purpose of computing their seniority in the gradation list.,

ii) We also do not disturb the finding of the learned First Court that the 2016 gradation list ought to be set aside. We do not find any rationale for,

segregating the vacancies which arose from 1st October, 2004 to 31st December, 2008 from the vacancies which occurred subsequent thereto. The",

recruitment process commenced after coming into operation of the 2004 Rules should be guided by the provisions of the said Rules.,

iii) We, however, do not accept the finding of the learned First Court that the roster system ought to be applicable in the facts of this case. We have",

given the reason for that in the preceding part of this judgment. We direct preparation of fresh gradation list covering all appointees of 2009 by taking,

the dates of their appointment on the basis of issue of the appointment notifications as the material date and not the dates of posting for the purpose of,

computing their seniority. Their seniority shall be determined on the basis of what we have held in this judgment. Inter-se seniority of the officers,

within a particular stream shall be determined as per Rule 31. We also retain the direction issued by the learned First Court that the appointees of,

2010 would come after the appointees of 2009 in the gradation list.,

45. The order of the learned First Court shall stand modified accordingly.,

46. There shall be no order as to costs.,

47. Urgent Photostat certified copy be given to the parties Hexpeditiously, if applied for.",