

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5518-5523 OF 2017

HON'BLE PUNJAB AND HARYANA
HIGH COURT AT CHANDIGARH

...APPELLANT(S)

VERSUS

STATE OF PUNJAB AND ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 10185-10187/2018 (DIARY NO.32341) OF 2017,
CIVIL APPEAL NO.10176 OF 2018 (ARISING OUT OF SLP(C) NO.16772
OF 2017),
CIVIL APPEAL NO.5513 OF 2017,
CIVIL APPEAL NO.5509 OF 2017,
CIVIL APPEAL NO.5525 OF 2017,
CIVIL APPEAL NO.5510 OF 2017,
CIVIL APPEAL NO.5515-5517 OF 2017, AND
CIVIL APPEAL NO.5528-5529 OF 2017

J U D G M E N T

ASHOK BHUSHAN, J.

Delay condoned. Leave granted.

2. These appeals have been filed challenging the judgment dated 03.03.2017 of Division Bench of the High Court of Punjab and Haryana at Chandigarh allowing the Writ Petition No.1056 of 2016 and other connected writ petitions.

3. The questions which have arisen for determination in this

batch of appeals relate to inter se seniority dispute between three streams of Punjab Superior Judicial Service, i.e.,

(i) the officers promoted on the basis of merit-cum-seniority under 50% quota (hereinafter referred to as "promotees");

(ii) the direct recruits under 25% quota (hereinafter referred to as "direct recruits"); and

(iii) officers promoted on the basis of limited departmental competitive examination under 25% quota (as it then existed) (hereinafter referred to as "out of turn promotees").

4. The members of Punjab Superior Judicial Service had filed writ petition in the High court challenging the seniority list dated 24.12.2007 issued by the High Court determining the inter se seniority of the members of the Punjab Superior Judicial Service.

5. The judgment of the Division Bench of the High Court has been questioned by Punjab and Haryana High Court at Chandigarh, members of Punjab Superior Judicial Service who were direct recruits and Superior Judicial Officers who are promotees under 50% quota. Civil Appeals on behalf of Kanwaljit Singh Bajwa and others and Jitender Kaur are the appeals filed by direct recruits and other appeals are the

appeals filed by the promotee officers under 50% quota.

6. C.A.Nos.5518-5523 of 2017 filed by the High Court are being treated as leading appeals, reference of pleadings of which appeals shall be sufficient to decide this batch of appeals.

Background Facts

7. The Higher Judicial Service of the State of Punjab was governed by a set of Rules, namely, Punjab Superior Judicial Service Rules, 1963. Rule 8, as it existed initially, provided that of the total number of cadre-posts, two-third shall be manned by promotee officers and one-third by direct recruits.

8. Rule 12 dealt with seniority which provided that the seniority, *inter se*, of the substantive members of the Service, whether direct recruits or promotee officers, shall be determined with reference to the respective dates of their confirmation. On 31.12.1976 Rule 12 was amended providing that seniority, *inter se*, of the members of the Service, shall be determined by the length of continuous service on a post in the Service irrespective of the date of confirmation.

9. On 28.01.1991, Rule 8(2) was amended providing that of the total number of cadre posts, three-fourth shall be manned by promotee Officers and one-fourth by direct recruits.

10. This Court in ***All India Judges' Association and others***

vs. Union of India and others, 2002 (4) SCC 247, on 21.03.2002, after considering Justice Shetty Commission's report had issued various directions regarding recruitment to the Higher Judicial Service in the cadre of District Judges. The directions were issued by this Court directing that recruitment to the Higher Judicial Service i.e. the cadre of District Judges shall be from three streams i.e.:

"(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 years 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. "

11. This Court further directed that appropriate rules shall be framed by the High Courts as early as possible in compliance of the aforesaid directions. The Punjab Superior Judicial Service (First Amendment) Rules, 2004 were notified on 15.01.2004 in compliance of judgment of this Court in **All India Judges' Association case (supra)**. It appears that amendment made in Rules on 15.01.2004 did not fully serve the purpose nor fully complied with this Court's directions made

in *All India Judges' Association(supra)*, hence, a new set of rules was framed, namely, the Punjab Superior Judicial Service Rules, 2007 which were published in the Gazette on 03.09.2007. The cadre strength of Punjab Superior Judicial Service before 2007 comprised of 88 posts. The High Court on 14.10.2004 had made 10 promotions as per unamended Rules on 10 vacancies which were existing since prior to amendment of Rules on 15.01.2004. On 31.08.2007, total cadre strength was 89, which was increased to 107 as on 11.10.2007. The process for recruitment of direct recruits under Rule 7(3)(c) of Rules, 2007 was initiated on 02.02.2008 with the publication of advertisement. The promotions under 50% quota on the basis of merit-cum-seniority was affected on 18.02.2008. The competitive test for limited departmental competitive examination was held on 18.05.2008 for which process was initiated on 23.04.2008 by issuance of letter via e-mail. Full Court on 25.07.2008 approved the recommendations both for direct recruitment and out of turn promotion, by two separate letters i.e. letter No.628 dated 29.07.2008 the recommendation of direct recruitment and by letter No.629 dated 29.07.2008 recommendation for out of turn promotion were sent to the Government. The appointment letters in reference to limited competitive examination were received earlier than those of

direct recruits. On 14.08.2008, Governor of Punjab issued Office Order whereby eight Officers were promoted under out of turn quota, posting with regard to whom was issued on 22.10.2008. The Governor of Punjab had issued letter for direct recruits on 28.11.2008 with regard to whom posting order dated 08.12.2008 was issued. Fifteen Officers were promoted under 50% quota, eight Officers were promoted under out of turn promotion quota 25%. Twelve direct recruits were appointed vide order dated 08.12.2008. The process of recruitment of all the three streams was thus completed in the same year and Officers of the three streams joined their respective posts in the year 2008 itself although on different dates. The promotees got joining first followed by out of turn promotees and lastly by direct recruits. This Court in **All India Judges Association and Ors. vs. Union of India and Ors., 2010 (15) SCC 170**, reduced the out of turn promotion quota from 25% to 10% which was to take effect from 01.01.2011. The High Court initiated the process of fixation of inter se seniority of the officers of two streams in the year 2014. A tentative seniority list was prepared and circulated by the Registrar of the High Court on 25.09.2014 to the members of Superior Judicial Service. Various objections to the list were filed including the objections by direct

recruits as well as officers promoted under the out of turn quota. The Judges' Committee submitted a report after considering the objections recommending that tentative seniority list determined does not require any modification or alteration and the same may be finalised. The report of the Committee was accepted by Full Court on 22.12.2015. A notification dated 24.12.2015 was issued publishing the inter se seniority of the members of Punjab Superior Judicial Service, promoted, appointed, absorbed in the year 2008. From serial Nos.1 to 14 in the list were the promotee Officers, from serial Nos.15 and 16 were direct recruits, from serial Nos.17 to 24 were promotee officers through limited departmental examination and from serial Nos.25 to 35 were direct recruits.

12. Writ Petition No.1056 of 2016, was filed by Kanwaljit Singh Bajwa and two others praying for following reliefs:

- i) To issue an appropriate writ, order or direction especially a writ in the nature of certiorari for quashing the impugned Seniority List dated 24.12.2015 (Annexure P-1) issued by respondent No.2;
- ii) To issue a writ of Mandamus or any other suitable writ, order or direction, directing the respondent No.1 and 2 to redraw and reframe seniority list by showing the petitioners over and above the respondent Nos.3 to 5;
- iii) To say the operation of the impugned seniority list 24.12.2015(P-1) and stay the further promotion of the respondents in furtherance of the impugned

seniority list;

iv) To any other writ, order or direction which this Hon'ble Court deem fit and proper keeping in view the peculiar facts and circumstances of the present case, in the interest of justice;

v) To dispense with the issuance of advance notices to the respondents;

vi) Exempt the petitioner from filing the certified & typed copies for the Annexures;

vii) Award costs of the writ petition in favour of the petitioner and against the respondents."

13. Writ Petition No.1209 of 2016 was filed by Jatinder Kaur, direct recruit, challenging the seniority list dated 24.12.2015. Similarly Writ Petition No.1057 of 2016 was filed by Jatinder Pal Singh Khurmi and others challenging the seniority list. Writ Petition No.2335 of 2016 was filed by Virinder Aggarwal & another, who were out of turn promotees. They also challenged the seniority list dated 24.12.2015. Their prayers in the writ petition were to the following effect:

"i) Issue an appropriate writ, order or direction in the nature of certiorari quashing the Tentative Seniority List dated 25.09.2014 (Annexure P-1), the Report dated 11.08.2015 (Annexure P-4) and the decision of the Full Court dated 22.12.2015 (Annexure P-5) and consequently directing the official respondents to frame a fresh seniority list of the Officers belonging to the Punjab Superior Judicial Service having been appointed in the year 2008 in accordance with law and specially

by implementing the roster and for the grant of all consequential benefits flowing therefrom viz. continuity of service, antedated promotions, arrears of pay, interest thereon etc.;

ii) issue any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case;

iii) exempt the petitioners from service of the advance notices upon the respondents;

iv) exempting the petitioners from filing the certified copies of the annexures;

v) costs of the petition be awarded to the petitioner."

14. Another Writ Petition No.1983 of 2016 was filed by Munish Singal and two others who were direct recruits challenging seniority list dated 24.12.2015. In the writ petitions affected parties were impleaded. The High Court through Registrar filed written statement in Writ Petition No.1056 of 2016. Promotees also filed their written statement in Writ Petition No.1056 of 2016. The Division Bench heard the parties. All the writ petitions were decided by a common judgment. The Division Bench of the High Court in its judgment had noticed the submission of the parties, the report of the Committee. In paragraph 102 of the judgment the High Court has observed that the Committee had framed eight issues. The eight issues framed by the Committee as noticed in paragraph 102 are

as follows:

"(1) Whether the promotions dated 19.02.2008 made under Rule 7(3)(a) are liable to be termed as irregular or 'ad-hoc', and if so, to what effect ?

(2) Whether the posts meant for the 'out-of-turn promotion' under Rule 7(3)(b) which remained unfilled as no competitive examination took place from the year 2004 to 2008, can be included in 'promotion quota' under Rule 7(3)(a), and if not, to which quota such posts shall stand diverted ?

(3) Whether promotions made on 19.2.2008 under Rule 7(3)(a) were in excess to the 'promotion quota', and if so, what is the effect on seniority of such excess promotions?

(4) Whether promoted officers irrespective of Rule 7(3)(a) or (b) are entitled to the 'weightage' of their service rendered in PCS (Judicial Branch) towards seniority in Superior Judicial Service in view of second proviso to Rule 23 of 2007 Rules ?

(5) Whether the direct recruits under Rule 7(3)(c) could be assigned seniority from the date their names were recommended by the High Court for appointment ?

(6) Whether officers absorbed from Fast Track Courts are liable to be treated as 'ex gratia appointees', and if so, what is the effect in law and what would be their 'deemed date of appointment'?

(7) Whether Roster (Appendix 'B') can be read into and applied to the Rule of seniority ?

(8) Whether Mr. Arunvir Vashista is entitled to be absorbed as ADJ w.e.f. 24.6.2008 or he be placed at Sr.No.1 amongst the out-of-turn promotees in view of para 146(13) of the judgment in Brij Mohan Lal-II ?"

15. The Division Bench further noticed that in the writ petition arguments were addressed relating to Issue

Nos.1,2,3,5 and 7. The High Court held that promotees were in excess, hence, promotions made shall be treated in excess of quota and they shall take seniority on the date post is available in their quota. The High Court further held that the date of recommendation of direct recruits cannot be treated the date for the purpose of seniority. On applicability of roster in determination of seniority, the High Court categorically held that roster shall be applicable in determining the seniority as per Rules, 2007. The vacancies under Rule 7(1)(b) shall shift to Rule 7(1)(a) only with effect from 01.01.2011. The writ petitions were allowed and operative portion of judgment is contained in paragraph 208 which is to the following effect:

"208. For the reasons mentioned above, the writ petitions are allowed. The impugned seniority list dated 24.12.2015 is set aside. It is held that:

(i) promotion of officers under Rule 7(3)(a) [Regular promotion] of the 2007 Punjab Rules is held to be beyond quota, hence, ad hoc. They will not be entitled to get benefit of that service for the purpose of seniority;

(ii) direct recruits shall not be entitled to be considered as members of the cadre from the date of their recommendation by the High Court to the State, for appointment;

(iii) as a consequence, the officers promoted under Rule 7(3)(a) of the 2007 Punjab Rules shall be placed at the bottom of the seniority after the direct recruits.

The seniority list be re-cast accordingly.”

16. Aggrieved by the judgment of the Division Bench of the High Court, the High Court has filed Civil Appeal Nos.5518-23 of 2017.

17. Civil Appeals of Kanwaljit Singh Bajwa and others and Civil Appeal of Jatinder Kaur, two Civil Appeals by direct recruits, other Civil Appeals have been filed by promotee Officers whose promotions were treated to be ad hoc and are directed to be placed at the bottom of the seniority. Out of turn promotees had not challenged the judgment, since, the judgment of the High court was substantially in their favour.

SUBMISSIONS

18. Shri Raju Ramachandran and Shri Ajit Sinha, learned senior counsel have appeared for the High Court. Shri Dushyant Dave and Shri K.V. Viswanathan, learned senior counsel have appeared for promotees. Shri P.S. Patwalia, learned senior counsel, has appeared for out of turn promotees. Shri Nidhesh Gupta, learned senior counsel has appeared for direct recruits. In addition, we have also heard several counsel in this batch of appeals appearing for different parties.

19. Shri Raju Ramachandran, learned senior counsel appearing for the High Court submits that seniority list prepared by the

High Court pursuant to the acceptance of Judges' Committee Report by Full Court was in accordance with Rules, 2007 and promotees had first joined the post and when the promotees joined post of District Judge cadre, neither direct recruits nor out of turn promotees were born in the cadre.

20. Shri Dushyant Dave, learned senior counsel appearing for regular promotees submits that they have completed five years of service in the year 2000 but neither any Rules were framed nor any examination was held. When the quota is to be followed due to the judgment of this Court, the promotees cannot be pushed down. No examination was held for effecting promotion under Rule 7(3)(b) hence promotees under Rule 7(3)(a) were entitled to have the quota meant for Rule 7(3)(b), continuous officiation in service is the Rule to be followed for determination of seniority, Full Court and Administrative Committee has taken correct view of the matter. The officers desirous to compete, ought to have approached the High court praying that examination to be held. The High Court did not hold any suitability test for promotion of the officers under Rule 7(3)(a) for which promotees cannot be made to suffer. The challenge to promotion cannot be allowed to be raised at the time of determination of seniority. The roster provided in Appendix B to the Rules, 2007 is only for the purpose of

recruitment and has no application for determination of seniority. Had the competitive examination for out of turn promotees held in February, 2008, promotees would have also appeared and would have succeeded in the examination. The appointment having not made in time, quota rule is broken down. The promotees having been promoted on regular basis even if they are in excess of quota, their services have to be considered, the appointment of promotees is not an ad hoc appointment, hence, entire service rendered by promotees is to be reckoned for seniority.

21. Shri K.V. Viswanathan submits that assumption that promotees are in excess of their quota is not correct. Rules, 2004 and roster introduced by Rules, 2007 has to be prospective. Computation has to be on 43 vacancies which were existing vacancies and not cadre strength of 107. In accordance with 43 vacancies the quota for promotees will be 22, out of turn promotees will be 10 and direct recruits will be 11. The roster has no application for determination for seniority. Assuming that Appendix B applies, it is for quota and since examination has not been held in time the quota has broken down.

22. Shri P.S. Patwalia appearing for out of turn promotees submits that whole argument made by the promotees is

misconceived. The diversion of quota under Rule 7(3)(b) to 7(3)(a) shall take place only when test is held and no suitable candidate is available for appointment under Rule 7(3)(b). The quota applied to the post in service. The High Court has wrongly applied the quota to the vacancies. 25% quota was introduced as incentive to improve meritorious officers. On date of selection, 53 were promotees who were in excess to their quota, 14 were filled by direct recruits and there were no vacancies for the regular promotees. There being no conscious decision of diversion of quota under Rule 7(3)(b) to 7(3)(a), no benefit can be claimed by the promotees. The clubbing of vacancies under Rule 7(3)(a) and 7(3)(b) is not permissible. The out of turn promotees have never challenged the merit promotion.

23. Shri Patwalia submits that roster is not applicable to the seniority. When the quota is worked out in the cadre strength there is no vacancy under Rule 7(3)(a) but 15 promotions have been affected. Their promotion is not in accordance with law. Whether they would have taken test or not is realm of conjecture, if we construe Rule 23 of Rules, 2007 and Punjab Civil Services (Conditions of Service) Rules, 1994 harmoniously the seniority has to be on the strength of length of service. Referring to Haryana Service Rules, Shri Patwalia

contends that in Haryana Service Rules roster has been made as part of seniority whereas in Punjab Service Rules it is not so. He submits that the High Court has made very equitable decision which needs no interference.

24. Shri Nidhesh Gupta appearing for direct recruits submits that this Court in **All India Judges' Association case (supra)** has introduced roster in seniority for the purposes to minimise inter se dispute of seniority in the Higher Judicial Service. The judgment of this Court in **All India Judges' Association case** has to be given effect by the High Court. Rules, 2007 has to be interpreted in the light of the judgment of this Court in **All India Judges' Association case**, which directions resulted in Amendment Rules, 2004 and Rules, 2007. Out of turn promotees in their writ petitions have prayed for applying the roster for determination of seniority. The High Court although in the body of judgment held that roster is applicable in seniority but in operative portion the said conclusion is not reflected which had rendered the judgment of the High Court erroneous. The roster having been accepted as applicable for purposes of seniority, seniority list has to be drawn as per roster. It is submitted that process of recruitment initiated on 2nd February, 2008 whereas promotions and out of turn promotions were held thereafter. It is

submitted that recommendations sent to the Government on the same day but appointment letter for direct recruits were received later which will have no effect on the seniority that is the direct recruits which have to be made as per the roster. Rule 7(4) read with Appendix B of Rules, 2007 makes it clear that appointment has to be made as per roster which clearly means that seniority will follow the appointment. In the writ petition filed before the High Court, out of turn promotees have categorically taken stand that roster is relevant for the purpose of seniority. The out of turn promotees cannot be allowed to take contrary stand before this Hon'ble Court. The fortuitous circumstances i.e. when letter of appointments were issued cannot be basis for seniority. Accepting the contention that length of service should determine the seniority and not the roster, shall be defeating the All India Judges Association's judgment of this Court as well as Rules, 2007. Rules, 2007 specially Rule 7, Rule 12, Rule 23 read with Appendix B have to be construed in a manner so to advance the object of Rules and should be interpreted in a manner so that no prejudice is caused to any member of Service.

25. Learned counsel for the parties have also referred to various judgments of this Court which shall be referred to

while considering the submissions in detail.

DISCUSSION

26. The subordinate judiciary of this Country is back bone of our judicial system. It is the subordinate judiciary which comes in contact with the common man in administration of justice. This Court in *All India Judges' Association (supra)* has noticed that the weight on the judicial system essentially rests on the subordinate judiciary. In paragraph 27 following was observed:

“27....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.....”

27. The enormous responsibility which is shouldered by subordinate judiciary demands respectable conditions of service and fulfillment of the due aspirations and expectations of the officers manning the judicial system. The seniority in service plays a very important and vital role in service career of an incumbent. Promotions, different perquisites and benefits follow seniority. It is, thus, very important that due claims of seniority of members of Superior Judicial Service are recognised and implemented by all those on whose shoulder the responsibility of determination and

implementation lies. This Court by its direction in **All India Judges' Association case (supra)** has required uniform procedure for recruitment and rules for determination of seniority with the object of achieving a uniformity and a certainty to minimise the inter se seniority dispute as far as possible. Thus, before we proceed to consider the respective submissions of the parties it is pertinent to refer to the judgment of this Court in **All India Judges' Association case** which is foundation of Service Rules, 2007 and throws light on different aspects of higher judicial service.

28. As noticed above, 1963 Rules contained provisions for filling the post of Superior Judicial Service only by two methods, by promotion from Punjab Service and by direct recruitment. Initially the total number of cadre posts two-third were manned by promotion and one-third direct recruits which was changed on 28.1.1991 as three-fourth by promotions and one-fourth by direct recruits.

29. In different States there were different Rules for recruitment in Judicial Service. Justice Shetty Commission took up the whole breadth and length of Judicial Service, its service conditions, perks and all aspects of the matter. On 21.03.1996 pursuant to direction of this Court, Government of India by a Resolution constituted a First Judicial Commission

under the Justice Shetty. Justice Shetty Commission has submitted its report on 11.11.1999 touching various aspects of Judicial Service. State and Union Territories were sent report asking their response. One of the questions which fell for consideration before the Justice Shetty Commission was method of recruitment to the Higher Judicial Service. In **All India Judges' Association case (supra)** this Court held that it is imperative for the Judicial Officer to keep abreast of knowledge of law. This Court also held 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. In paragraph 27 of the judgment following was laid down:

"27....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 standards, 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 caliber 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 post in the higher judicial services must be filled by promotion on the basis of principle of merit-cum-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. "

30. In paragraph 28 directions were issued by this Court to the following effect:

"28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the High 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 years 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."

31. This Court has noticed the serious discontentment regarding inter se seniority of members of Higher Judicial Service. This Court observed that the least amount of litigation in the country is there where quota system in recruitment exists and where a roster system is followed. Following was laid down in paragraph 29:

"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, 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 higher judicial service. The quota for promotion which we have prescribed is 50 percent by following the principle "merit-cum-seniority" 25 percent 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, in so far 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 and Ors. v. State of Punjab[1995]2 SCC 745. 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's case (supra) 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. "

32. In pursuance of judgment of this Court dated 21.03.2002 Rules, 1963 were amended in 2004 by Punjab Superior Judicial Service (First Amendment) Rules, 2004 where for existing Rules following Rules have been substituted:

"8. Recruitment to Service.- Recruitments to the Service shall be made in the following manner:-

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

(b) twenty five per cent by promotion strictly on the basis of merit through limited

departmental competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service;

(c) twenty five per cent by direct recruitment from amongst the eligible Advocates by holding a test consisting of written examination of 200 marks and *viva voce* test of 50 marks to be conducted by the High Court".

33. Punjab Superior Judicial Service Rules, 2007 were framed and notified in Gazette on 3rd September, 2007. Rule 7 dealt with method of appointment which is to the following effect:

"7. Method of appointment. - (1) The appointment to the Service by promotion shall be made from amongst the members of the Punjab Civil Service(Judicial Branch), by the Governor on the recommendations of the High Court.

(2) The direct appointment to the Service shall be made by the Governor on the recommendations of the High Court from amongst the eligible advocates on the basis of the written test and *viva-voce* conducted by the High Court.

(3) Appointment to the Service shall be made in the following manner :-

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

(b) twenty-five per cent by promotion on the basis of merit through departmental competitive examination of Civil Judges (Senior Division) having not less than five years qualifying Service as Civil Judge (Senior Division); and

(c) twenty-five per cent of the posts shall be filled by direct appointment from amongst the eligible advocates on the basis of the written

test and viva-voce, as conducted by the High Court.

Explanation. – For the purposes of clauses (a) and (b), it is clarified that the qualifying service for promotion should be either on the post of Civil Judge(Senior Division) or Chief Judicial Magistrate or Additional Civil Judge(Senior Division) separately or by clubbing the service on any of the said posts.

(4) These posts shall be filled in accordance with the Roster attached as Appendix-B.”

34. Rule 12 dealt with seniority in the following manner:

“12.**Seniority.**—(1)The original seniority of the promotee officers promoted from amongst the members of the Punjab Civil Services (Judicial Branch), shall not be disturbed.

(2) The inter se seniority of the out-of-turn promoted officers shall be in the order of merit as is determined by the High Court.

(3) The inter se seniority of the direct appointees shall be on the basis of merit as is determined by the High Court :

Provided further that an officer, who is promoted on ad hoc basis on a vacant post, belonging to the out-of-turn promotee officers or direct appointees, as the case may be, shall not have any right on the said post and such officer shall not be allowed to claim addition of the period of such ad hoc service towards the Service for the purpose of seniority.”

35. Rule 23 dealt with application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 in respect of the matters, which are not specifically provided in these rules. Rule 23 is as follows:

"23. Application of the Punjab Civil Services (General and Common Conditions of Service Rules, 1994. – (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time:

Provided that the said rules of 1994 shall not affect the provisions as contained in rules 5, 7, 12, 13, 19, 20 and 21 of these rules :

Provided further that the conditions of service as determined by the National Judicial Pay Commission shall have an over riding effect.

(2) The Punjab Civil Services (General and Commons Conditions of Service) Rules, 1994, at present, in force are contained in Appendix 'E'."

36. Appendix 'B' provided for roster as referred to in Rules, 2007.

37. As noticed above in the present matter recruitments for all the three streams as enumerated in Rule 7(3)(a), (b) and (c) were completed in 2008 and all incumbent also joined their post in 2008. The dispute is regarding *inter se* seniority of above three streams. From the submissions of learned counsel for the parties and pleadings on record following are main **issues** which have arisen for consideration in this batch of appeals:

(1) Whether promotees promoted under Rule 7(3)(a),

15 in numbers who were promoted and joined their post in February, 2008 were: (a) in excess to their quota, (b) their appointment has to be treated as ad hoc appointment, (c) they have to be placed at the bottom of seniority.

(2) Whether appointment to members of Superior Judicial Service belonging to all three streams have to be made on the basis of roster as per Rule 7(4) read with Appendix B of the Rules, 2007.

(3) Whether for determination of inter se seniority belonging to all the three streams has to be based on the basis of roster in pursuance of Rule 7 read with Appendix B.

(4) How the inter se seniority of Fast Track Judges is to be determined who were earlier working as Fast Track Judges and have been absorbed and taken in regular cadre in different stream under Rule 7(3)(a), (b) and (c).

(5) Reliefs, if any.

Issue No.1:

Whether promotees are in excess of their quota?

38. The High Court in its impugned judgment has noticed the cadre strength of Punjab Superior Judicial Service as 107 on

10.11.2007. The Promotion quota under Rule 7(3)(a) was determined as 53 and actual working having been found as 58. High Court noticed that 05 officers were working in excess. 25 per cent quota under Rule 7(3)(b) was determined as 27, which was found to be vacant. Direct recruits were also determined as 21 excluding the officers in position. 14 posts were advertised for direct recruitment. One of the issues raised is as to whether for determination of the quota cadre strength has to be looked into or quota has to be determined on the basis of vacancies by bifurcating vacancies as per respective quota. The issue is no more res integra. In **All India Judges Case (supra)**, this Court in Para 29 has held "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". A Three Judge Bench of this Court in **Srikant Roy and Others Vs. State of Jharkhand and Others, (2017) 1 SCC 457** while determining question of number of vacancies in respect of limited competitive examination of Jharkhand as in Jharkhand Superior Judicial Service has held that "cadre strength is always measured by the number of posts comprising the cadre and the percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the

vacancy that would occur. Following was laid down in Paragraph 24:-

"24. The High Court has overlooked the distinction between "post" and "vacancy". If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in-service judicial officers by promotion through limited competitive examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the vacancy that would occur....."

39. The High Court Committee determined the vacancies for all the three streams for 2008 recruitment on the basis of cadre strength of 107. Working strength before 2008 selection was 58 promotees, 0 out of turn promotion and 6 direct recruits. Thus, 64 officers were in position and there were 43 vacancies for 2008 recruitment. High Court determined vacancies for Rule 7(3)(a) as 15, for Rule 7(3)(b) as 8 and 14 for direct recruitment. In the impugned judgment, the High Court has taken a view that since 50 per cent of 107 cadre strength comes as 53, 5 promotee officers were in excess, since working strength before 2008 selection was 58. The above calculation has been arrived by determining 50 per cent of 107. Whether

any fallacy is committed by the High Court in above determination is to be examined. On face of it, the determination on mathematical calculation, i.e. taking 50 per cent of cadre strength for promotees come to 53. Thus, whether 5 officers, who were found in excess were in excess of their quota is one part of question and the other part of question would be that what number of vacancies have to be earmarked for out of turn promotees under Rule 7(3)(b). We have already noticed that from 28.01.1991, Rule 8 was amended providing for three-fourth of the cadre to be filled up by promotee officers and one-fourth by direct recruits. The above position continues till Rules were amended in 2004 under the direction of this court in **All India Judges case (supra)**.

40. For the first time by amending Punjab Superior Judicial Service Rules on 15.01.2004, the promotion quota under Rule 8 was fixed as 50 per cent, 25 per cent for limited departmental competitive examination and as far as for direct recruits, earlier 25 per cent was maintained. Thus, the issue was only with regard to quota for promotion on the basis of merit-cum-seniority and of out of turn promotees. This Court in **All India Judges case (supra)** in Para 29 has clearly directed that the system which was directed to be put in place by this Court vide Paras 27, 28 and 29 was to apply

prospectively. This Court had directed that appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003. Upto 2004, the quota for promotion on the basis of merit-cum-seniority was 75 per cent, the cadre strength as on 13.09.2007 was 89, which was increased on 10.11.2007 as 107. After the amendment of Rules on 15.01.2004, promotion of 10 officers were made. It is mentioned in the Civil Appeal of the High Court that cadre strength of Punjab Superior Judicial Service before 2004 was 88. Thus, in the year 2004, when the cadre strength was 88, 75 per cent posts were to be manned by promotees under merit-cum-seniority, i.e. 66 were to be manned by promotee officers. The judgment of this Court in **All India Judges case (supra)** being prospective, the ratio of officers as existing before unamended rules can not be adversely affected. A promotee before the amendment of Rules, 2004, who was well within their quota, suddenly cannot go out of their quota and become an excess merely on the strength of amendment of Rules, which are prospective in nature. For determining the quota, the cadre strength, which existed prior to amended rules and subsequent to the amended rules have to be treated differently. Promotees quota, which was 75 per cent prior to 2004 Rules makes 66 posts in their quota as before amendment

dated 15.01.2004, when the cadre strength has been increased from 89 to 107, 18 posts have to be further added to the cadre. This increase having been made after the amendment of the Rules dated 15.01.2004, on this cadre strength, the Rules as amended will be applied for bifurcation of quota. On 18 newly created posts, 50 percent comes to 9, for out of turn promotees 4.5 and for direct recruits 4.5. Thus promotee officers on or after the increase of the cadre could have been 66+9 i.e. 75. In the appeal filed by the High Court, it is also indicated that 10 promotees were affected in October, 2004 under 50 per cent quota of merit-cum-seniority. The rules providing 25 per cent quota for out of turn promotion being in place, at-least few vacancies ought to have been given to the out of turn promotees. There is no details of any further promotion or appointment made after 2004 to 2008. The out of turn promotion quota having been culled out only as per the judgment of this Court in **All India Judges case (supra)**, which was to be required in the Rules by the State, the said quota will come into existence only prospectively. An out of turn promotee cannot claim that they should be given 25 per cent posts of the cadre strength right from day one. It is true that quota has to be determined on the basis of cadre strength but determination of the cadre strength has to

be made taking into consideration that rules amended w.e.f. 15.01.2004 were prospective in nature and cannot impair or affect any right, which accrued to the member of judicial service prior to the amendment of the Rules.

41. We, thus, do not find any patent error in the calculation of the vacancy by the High court in the administrative side and consequently the recruitment made from three different streams was well within such determination and cannot be faulted. The promotion of officers under Rule 7(3)(a) was in accordance with the rules and there is no question of treating the promotion to be adhoc promotion nor they can be pushed to the bottom of seniority. The new set of rules, the new scheme of recruitment, new rules of determination of seniority as brought in place by 2007 Rules, its implementation has to be done with care so as not to defeat any existing right. Mechanical application of the rules, which may result to unjust result has to be avoided to advance the scheme of the new rules and the object which were delineated by this Court in **All India Judges case (supra)**. While allocating posts to be filled by different streams, cadre strength, officers of particular stream in position, quota of each stream has to be kept in mind. The vacancies existing for recruitment in particular year has not to be mechanically divided at the

ratio of 50, 25 and 25 per cent.

Issue Nos. 2 and 3:

Whether appointment to members of Superior Judicial Service belonging to all three streams have to be made on the basis of roster as per Rule 7(4) read with Appendix B of the Rules, 2007? and

Whether for determination of inter se seniority belonging to all the three streams has to be based on the basis of roster in pursuance of Rule 7 read with Appendix B?

42. One of the major area of difference in submissions advanced by learned counsel appearing for the promotees, direct recruits and out of turn promotees is regarding applicability of roster for determination of seniority. In so far the stand of out of turn promotees is concerned, although before the High Court in its pleadings and submissions, out of turn promotees prayed for implementation of roster in seniority but in this Court they have taken a somersault and are now contending that the roster is not applicable in seniority.

43. Rota and quota in service jurisprudence is well known concept, which finds reflected in large number of service rules of different services. Quota between promotees and directs were throughout present in 1963 Rules, which has been further amplified in 2007 Rules. This Court in **All India Judges case (supra)** has highlighted the importance and the

usefulness of roster system. In Para 29, it was held:

"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*, (1995) 2 SCC 745."

44. The Rules, 2007 has been amended by direction of this Court in in **All India Judges case (supra)**. Now, coming back to the Rules, 2007, there are two rules, which need to be interpreted to find out real purpose and intent of 2007 Rules. Rule 7 as noted above provides for method of recruitment, sub-rule(3) provides for appointment to the service shall be made 50 per cent by promotion on the basis of merit-cum-seniority, 25 per cent by promotion on the basis of merit through departmental competitive examination of Civil Judges (Senior Division) and 25 percent of posts shall be filled by direct recruitment. Sub-clause (4), which is relevant provides "these posts shall be filled in accordance with the Roster attached as Appendix-B". Part of Appendix-B,

which is relevant for the present case is as follows (only part is quoted):-

"APPENDIX 'B'

[See sub-rule(4) of rule 7]

ROSTER

ROSTER INDICATING THE MODE OF RECRUITMENT

Serial No.	Source	Rule
1.	Officer Promoted on the basis of seniority-cum-suitability	7(3)(a)
2.	Officer promoted on the basis of seniority-cum-suitability	7(3)(a)
3.	Direct Recruit from the Bar	7(3)(c)
4.	Officer promoted through limited competitive examination	7(3)(b)
5.	Officer promoted on the basis of seniority-cum-suitability	7(3)(a)
	XXXXXXXXXXXXXXXXXX	
89.	Officer promoted on the basis of seniority-cum-suitability.	7(3)(a)

45. Sub-rule (4) uses the phrase "the posts shall be filled". The word "filled" means appointment on the post. The submission of the learned counsel for the promotees is that sub-rule(4) read with Appendix-B at best can be read that roster is to be followed in recruitment only and not for determination of seniority. When an order for filling up of a post is provided in Appendix-B, the purpose and object is that officers of different streams should hold the posts in the

sequence, which is provided in Appendix-B. The recruitment to the different streams consists of different and separate processes, few processes may take lesser time like effecting promotion under Rule 7(3)(a) whereas few processes like direct recruitment under 7(3)(c) takes greater time. For direct recruits, which is an All India Competitive Written Test, large number of candidates participate and evaluation of answer sheets and holding viva-voce takes sufficient time. The object as incapsulated by this Court in **All India Judges case (supra)** in carrying recruitment by roster was with the object of eliminating disputes pertaining to determination of seniority. The Rule 7(4) and Appendix-B has to be read in a manner so as to advance the object of the Rules. When this court directed for adopting roster system for determining seniority, Rules, 2007 cannot be interpreted in a manner which may violate the direction of this Court. Article 141 of the Constitution provides that law declared by the Supreme Court shall be binding on all courts and authorities. In this reference, it is useful to refer to a Three Judge Bench judgment of this Court in **O.P. Singla and Another Vs. Union of India and Others, (1984) 4 SCC 450**, this Court had occasion to consider the issue of seniority and promotion in context of temporary promotee, direct recruits quota rules in respect of

Delhi Higher Judicial Service Rules, 1970. This Court in Para 17 held that when a Rule or Section is part of integral scheme, it should not be considered or construed in isolation.

In paragraph 17, following has been held:-

"17.....However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter-related provision becoming otiose or devoid of meaning. That makes it necessary to call attention to the very next rule, namely, Rule 8. It provides by clause 2 that:

"The seniority of direct recruits vis-a-vis promotees shall be determined in the order of *rotation of vacancies* between the direct recruits and promotees *based on the quotas of vacancies reserved for both categories* by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on."

(emphasis supplied)

This provision leaves no doubt that the overall scheme of the rules and the true intendment of the proviso to Rule 7 is that one-third of the substantive posts in the Service must be reserved for direct recruits. Otherwise, there would neither be any occasion nor any justification for rotating vacancies between direct recruits and promotees. Rule 8(2), which deals with fixation of seniority amongst the members of the Service, provides, as it were, a key to the interpretation of the proviso to Rule 7 by saying that the proviso prescribes "quotas" and reserves vacancies for both categories. The language of the proviso to Rule 7 is certainly not felicitous and is unconventional if its intention was to prescribe a

quota for direct recruits. But the proviso, as I have stated earlier, must be read along with Rule 8(2) since the two provisions are interrelated. Their combined reading yields but one result, that the proviso prescribes a quota of one-third for direct recruits."

46. One submission, which was pressed by learned counsel for the promotees as well as by learned counsel appearing for the out of turn promotees was that in 2007 itself, Judicial Service Rules have been framed for Haryana namely, Haryana Superior Judicial Service Rules, 2007, in which Rules, it was expressly provided by Rule 10 of the Rules that *inter se* seniority of the persons recruited to the service under clause (a), (b) and (c) of Rule 6 shall take his position in the seniority list as shown in roster annexed. Rule 10 of the Haryana Rules is as follows:-

"10. Seniority.

- (i)(a) The *inter se* seniority of the members of the Haryana Civil Service (Judicial Branch) promoted in the same batch under rule 6(a) shall be the same as in the Haryana Civil Service (Judicial Branch).
- (b) *Inter se* seniority of the member of the Haryana Superior Judicial Service promoted under rule 6(b) shall be in the order of merit determined in the selection process.
- (c) *Inter se* seniority of the direct recruits to the Service under rule 6(c) shall be on the basis of merit determined by the Selection Committee of the High Court at the time of the recruitment.

(d) Inter se seniority position of the officers appointed in the Service under rule 6 shall be as given in roster annexed.

(ii) A person recruited to the Service under clauses (a), (b) and (c) of rule 6 shall take his position in the seniority list as shown in the roster annexed irrespective of the date on which he actually joins the Service.

(iii) A promoted officer, who is promoted on an ad hoc basis in the vacancy/post against a roster point earmarked for an officer belonging to categories specified in clauses (b) and (c) of rule 6, shall not have any right to the post. He shall not be entitled to add period of his ad hoc service to regular service for the purpose of seniority:

Provided that the existing rules shall continue to govern the matters of seniority of the existing members of the Service."

47. It has been pointed out that both Judicial Service Rules, 2007 of Haryana and Punjab Superior Judicial Rules, 2007 were sent by the High Court in the similar fashion, where Punjab Rules have been published by the Government by changing the proposed rules pertaining to seniority without consultation of the High Court. The High Court in its impugned judgment in Para 181 after noticing the Haryana Rules, 6, 7, 8 and 9 has made following observations:-

"Similar rules were recommended by the High Court to the State of Punjab for notification but changed at its own level without consultation with High Court."

48. In the present case, we need not enter into the issue as

to what was proposed and what changes were made by Government while notifying the rules. The above observation in the impugned judgment clearly indicate that Punjab & Haryana High Court has contemplated to implement the direction of this Court in **All India Judges case (supra)** and it was clear to the High Court that the appointment of all the three streams as per roster is to also determine the seniority as per the roster. In any view of the matter, there is nothing in the Rules – Punjab Superior Judicial Service Rules, 2007, which may indicate that there is any provision contrary to determination of seniority by roster. Mere fact that said rules are not explicit or makes it expressly clear that seniority is to be determined on the basis of roster is not conclusive. The purpose and object of the Rule 7 of Rules, 2007 read with Appendix-B is clear that the roster is to be followed for determination of the seniority. The High Court in the impugned judgment has considered the issue as to whether roster is applicable in determination of seniority or not. Issue No. 7 as was noticed above, which was framed by the Committee and was also adjudicated by the High Court was “Whether roster (Appendix-B) can be read into and applied to the rule of seniority”. After elaborate discussions, High Court in Para 180 concluded:-

"Hence, this Court is of the opinion that for determination of inter se seniority of officers recruited from three different sources, roster as directed by Hon'ble the Supreme Court shall be applicable. The same forms part of the Rules as Appendix 'B' but mentioning roster for recruitment, however, shall be applicable even for determination of seniority."

49. We endorse the above view of the High Court that roster shall be applicable for determination of seniority.

50. At this juncture, one of the submissions, which has been emphatically pressed by the learned counsel for the promotees is that for determination of seniority, continuous length of service is determinative. The direct recruits and out of turn promotees, who were not even born in the cadre when promotees were promoted, they have to take seniority after the promotees. In this reference, it is useful to refer to a judgment of this Court in **Union of India and Others Vs. N.R. Parmar and Others, (2012) 13 SCC 340**, the issue in the said case was also an issue of determination of seniority between direct recruits vis-à-vis promotees and quota and rota principles. This Court had occasion to consider the office memorandum issued by the Government dated 22.12.1959. Noticing Para 6 of above office memorandum following was stated in Para 23 of the judgment:-

"23. The General Principles for determining seniority

in the Central Services are shown to have been laid down in an annexure to an Office Memorandum dated 22-12-1959 issued by the Government of India, Ministry of Home Affairs (hereinafter referred to as "the OM dated 22-12-1959"). Para 6 of the annexure, referred to above, laid down the manner of determining inter se seniority between direct recruits and promotees. Para 6 is being extracted hereunder:

"6. Relative seniority of direct recruits and promotees.—The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Department Rules."

It is apparent from the above extract of the OM dated 22-12-1959, that the "quota" between promotees and direct recruits was to be read into the seniority rule. The OM also provided for a definite rotation of seniority points ("rota") between promotees and direct recruits. The rotation provided for was founded on the concept of rotation of quotas between promotees and direct recruits. It is therefore apparent, that under the OM dated 22-12-1959 inter se seniority between the promotees and direct recruits was based on the "quota" and "rota" principle. The same has been meaningfully described as "rotation of quotas" in some of these instruments."

51. There was further office memorandum on 07.02.1986 to take care of situation where it was decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby

giving them unintended seniority over promotees who were already in position, would be dispensed with. This Court noticed office memorandum dated 07.02.1986 and observed that "when direct recruits or promotees become available through later examinations or selections", it clearly mean that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a "later" examination or selection.

52. In the above context, this court laid down following in Paragraph 31.2 that "it is not necessary, that the direct recruits of a particular recruitment year, should join within the recruitment year itself". It was held that date of joining would not be a relevant factor for determining seniority of direct recruits. In paragraph 31.2 and 34.1 following has been laid down:-

"31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source),

for vacancies of the same recruitment year.

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection."

53. In the present case, process for all the three streams was completed in the year 2008 and all the officers of three streams had joined in the same year. The submission that quota rota rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will lead to uncertainty and

making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter se seniority, which is to be decided on the basis of roster.

The position of Fast Track Court Judges including in the Select list of all three streams in 2008 recruitment.

54. The promotion order issued by the Government of Punjab on the recommendations of the High Court promoting fifteen officers under 50% quota under Rule 7(3)(a) also contained six officers who were working on ad-hoc basis in Fast Track Courts. Similarly, appointment order promoting eight judicial officers under quota for out of turn promotion included one officer Shri Arunvir Vashista, who was working on ad-hoc basis in Fast Track Court. The tentative seniority list indicates that two officers namely Parminder Pal Singh (at Sl.No.15) and Sukhdev Singh (Sl.No.16) were shown as direct recruits having been absorbed from Fast Track Courts against the quota of direct recruits under Rule 7(3)(c). Parminder Pal Singh and Sukhdev Singh were recruited as Fast Track Court Judges

directly from the Bar. In the tentative seniority list, the name of promotee officers who had earlier been working as Fast Track Court Judge have been shown as per their seniority in lower cadre.

55. The officers, under out of turn promotions quota, whose names were mentioned at Serial No.17 to 24 under Rule 7(3)(b) were arranged according to their merit as disclosed in limited Departmental Competitive Examination. Two Fast Track Court Judges who were included against available posts in direct recruit quota were shown above the direct recruits. In so far inter-se-seniority amongst the promotee officers promoted under Rule 7(3)(a) is concerned, there is no issue. All have been arranged according to their seniority as required by Rule 12(1). After the circulation of tentative seniority list dated 25.09.2014, objections were filed by direct recruits questioning the placement of Parminder Pal Singh and Sukhdev Singh at Serial No.15 and 16 under the direct quota above other direct recruits.

56. With regard to Parminder Pal Singh and Sukhdev Singh, it was stated by direct recruits that their appointment under Rule 7(3)(c) was not permissible since they were not advocates at the time of selection of Direct recruits and they were not

selected on the basis of the written test and viva-voice under which all direct recruit candidates were subjected. It was submitted that absorption of these officers is an *ex gratia* absorption in service and as such they cannot be treated senior to the direct recruits.

57. One of the out of turn promotee namely, Arunvir Vashista had staked his claim before the committee. It was submitted that he being seniormost officer among the out of turn selected candidates and although he was placed at serial No.6 as per his merit but he being the only officer who already stood promoted as presiding officer of the Fast Track Court on ad-hoc basis, he was entitled to be absorbed and remained promoted to the Superior Judicial Service. Thus, his appointment on regular basis will relate back to his appointment in Fast Track Court in the service.

58. With regard to absorption of Fast Track Court Judges, this Court had elaborately considered the issue in ***Brij Mohan Lal versus Union of India and others, (2012) 6 SCC 502***. Fast Track Courts Judges who were working as direct recruits from the Bar as well as those who were ad-hoc promotees as Fast Track Court Judges had staked their claim for being absorbed on regular cadre. After considering the respective submission,

this court in paragraph 207 has issued various directions. Paragraph 207.9 relates to Fast Track Court Judges who were appointed by way of direct appointment, which is to the following effect: -

"207.9. All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective States only in the following manner:

(a) The direct recruits to FTCs who opt for regularization shall take a written examination to be conducted by the High Courts of the respective States for determining their suitability for absorption in the regular cadre of Additional District Judges.

(b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four senior most Judges of that High Court.

(c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40% aggregate for general candidates and 35% for SC/ST/OBC candidates. The examination and interview shall be held in accordance with the relevant Rules enacted by the States for direct appointment to Higher Judicial Services.

(d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the

interview marks.

(e) Needless to point out that this examination and interview should be conducted by the respective High Courts keeping in mind that all these applicants have put in a number of years as FTC Judges and have served the country by administering justice in accordance with law. The written examination and interview module, should, thus, be framed keeping in mind the peculiar facts and circumstances of these cases.

(f) The candidates who qualify the written examination and obtain consolidated percentage as aforeindicated shall be appointed to the post of Additional District Judge in the regular cadre of the State.

(g) If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State Governments to create such additional vacancies as may be necessary keeping in view the number of candidates selected.

(h) All sitting and/or former FTC Judges who were directly appointed from the Bar and are desirous of taking the examination and interview for regular appointment shall be given age relaxation. No application shall be rejected on the ground of age of the applicant being in excess of the prescribed age."

59. With regard to candidates from any state who were promoted as Fast Track Court Judges from the post of Civil Judge, Senior division, following direction were issued in

paragraph 207.13:

"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 out-of-turn promotion on merit, in accordance with the judgment of this Court in All India Judges' Assn. (3)¹², 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."

60. With regard to the candidates Parminder Pal Singh and Sukhdev Singh, Recruitment and Appointment committee has

noticed that they were subjected to a written test and viva-voice for finding their suitability to be absorbed in the regular Cadre. In paragraph 9 of the report dated 11.08.2015 of Recruitment/Promotion Committee (Superior Judicial Service) it has noticed that presiding officers of Fast Track Courts for being considered in the regular Cadre, they were subjected to undergo written test examination and viva-voice. Paragraph 9 of the report of the committee is as follows: -

"9. Hon'ble Selection Committee comprising the Chief Justice and four senior-most judges in its meeting held on 18.03.2008 considered the absorption of Presiding Officers of Fast Track Courts in the regular cadre of Additional District & Sessions Judges from the quota of Bar in the State in the States of Punjab and Haryana, respectively. The Officers were considered on the basis of their performance in (i) written examination; (ii) viva voice and (iii) ACRs. As per the merit list, the names of Parminder Pal Singh and Sukhdev Singh were recommended for absorption in the regular cadre of Additional District & Sessions Judge in the State of Punjab. These recommendations were approved by the Full Court in its meeting held on 10.04.2008. The Government of Punjab appointed both the Officers to Punjab Superior Judicial Service Order dated 24.06.2008."

61. The above report was subsequently approved by full court on the basis of which tentative seniority list was issued. The two officers Parminder Pal Singh and Sukhdev Singh were

appointed to Punjab Superior Judicial Service by Order dated 24.06.2008. In the tentative seniority list, they were placed at serial no.15 and 16 i.e. above the direct recruits. It is relevant to note that the tentative seniority list was prepared by the committee on the basis of continuous length of service. It was probably due to that reason that serial no. 15 and 16, direct recruits were shown above the out of turn promotees and direct recruits. The above two officers who were taken on the regular Cadre of Additional District Judge, after written test and viva-voce test which is almost the same procedure which has been subsequently laid down by this Court in ***Brij Mohan Lal case dated 19.04.2012(Supra)***. The above two officers having been included in direct recruitment quota, they have to be clubbed along with the direct recruits. We have already held that for determining the seniority, the roster is applicable. The objection of direct recruits that they cannot be included in the quota meant for direct recruits since they have not undergone the same written test and viva-voce, which has been undertaken by the direct recruits, thus, cannot be accepted.

62. As per the judgment of this court in ***Brij Mohan Lal case (Supra)***, officers from Bar, advocates working as Fast Track Court Judges can be taken under the regular Cadre after they

have cleared the written test and viva-voice. The direction of this Court in paragraph 207.9(g) which says that "if for any reason, vacancies are not available in the regular Cadre, we hereby direct the State Government to create such additional vacancies as may be necessary, keeping in view the number of selected candidates", indicates that Fast Track Court Judges had to be taken into regular cadre if vacancies are there. In the present case, there have been adjustments against two vacancies which were available, hence, they having been taken in the regular Cadre as a direct recruit, has to be accepted. Further, present is not a case where their selection in the regular cadre as Additional District Judge is under challenge. Only issue which is raised is regarding their placement in the seniority list.

63. One more aspect in this context needs to be noted. Rule 12(3) provides that "the inter-se-seniority of the direct appointee shall be on the basis of merit as is determined by the High Court." The inter-se-seniority as contemplated by Rule 12(3) obviously means inter-se-seniority reflected in the same examination. The two officers from the Fast Track Court having not taken the same examination, Rule 12(3) is not technically applicable while judging inter-se-seniority of these two officers and other direct recruits. However, in view

of the directions of this Court in **Brij Mohan Lal's case (Supra)** taking these two Fast Track Court officers from Bar in the regular cadre cannot be held faulty. They having been working as Additional District Judges in the Fast Track Court and they having been appointed in the regular cadre although in the same recruitment year, their placement above other direct recruits is justified. However, these two officers will be grouped along with direct recruits and shall occupy position number 1 and 2 in the direct recruits and others will follow thereafter.

64. Now we come to the claim of Shri Arunvir Vashista Fast Track Court Judge who was selected by out of turn promotion. Shri Arunvir Vashista was appointed as Fast Track Court Judge consequent to promotion of fifteen officers under Rule 7(3) (a). The appointment and selection committee along with proposing fifteen promotions under Rule 7(3)(a) has also proposed seven officers to man the Fast Track Courts in which Shri Arunvir Vashista was included. Shri Arunvir Vashista thus occupied the Fast Track Court judge post in the year 2008 itself and participated in the limited departmental competitive examination and secured sixth position on merit. Among the out of turn promotees Shri Arunvir Vashista has been placed at sixth place.

65. Shri Arunvir Vashista in his brief written synopsis does not dispute that seniority is to be fixed by the roster points and irrespective of the fact, as to when a person is recruited. He rightly submits that rules are subsidiary and subservient to the law. He has also placed reliance on order of this Court dated 28.04.2016 passed in W.P.(C) No.1022/1989, All India Judges Association and others versus Union of India and others. The Order of this court dated 28.04.2016, is to the following effect: -

"The second prayer of the petitioner is for direction to the respondents to follow "post based roster" in appointments to the cadre of District Judges with effect from 31.03.2003. The said prayer is again based on the statement of law as propounded in paragraph 49 of the above referred to decision rendered in All Indian Judges' Association and Others (Supra). While stating as to in what manner the 40-point roster is to be determined, this Court directed that appropriate Rules and methods should be adopted by the High Courts and approved by the States wherever necessary by 31.03.2003. When this application was moved, initially on behalf of the High Court, learned Standing Counsel took notice and submitted that in the High Court a Committee has been constituted which is deliberating on this issue and, therefore, he will be able to report to this Court in a week's time. It is now pointed out by Mr.Patil, learned senior counsel for the applicant(s) that the 34 point roster has been drawn by the High Court based on the cadre strength providing for different points applicable to the promotes by way of limited competitive examination as well as for direct recruits in the entry

level District/Additional District and Sessions Judge. It is also brought to our notice that appropriate Rules have also been drawn by the High Court which has been notified by the State Government on 16th March, 2004.””

66. The Order of this Court dated 28.04.2006 re-enforces the directions given by this Court in All India Judges' Case dated 21.03.2002.

67. It was contended on behalf of Shri Arunvir Vashista before the Recruitment and Promotion Committee that although in the merit list of out of turn promotion, he is at serial No. 6 but he being the only officer who was working officer as presiding officer of the Fast Track Court on ad-hoc basis, he is "entitled to be absorbed and remained promoted to the post." There is no denial that Shri Arunvir Vashista has been regularly promoted under Rule 7(3)(b) and continues his substantive promotion. When the roster is applicable, the seniority has to be fixed by the roster point. As per Rule 12(2) the inter-se-seniority of the out of turn promoted officers shall be "in the order of merit as is determined by the High Court". Thus, seniority position of Shri Arunvir Vashista among the out of turn promotees has to be in accordance with the merit. His position among the out of turn promotees has thus rightly been shown as serial no.6 with

which no infirmity can be found. We thus conclude that all Fast Track Court judges who were taken into the regular cadre in different streams have been rightly placed in the seniority list amongst their stream to which no exception can be taken.

OUR CONCLUSIONS:

68. The tentative seniority list was prepared on the basis of continuous length of service, hence, all promotee officers who had joined on 27th/28th February, 2008 have been shown at serial no.1 to 14. Parminder Pal Singh and Sukhdev Singh, Fast Track Court Judges from Bar who were appointed in regular cadre w.e.f. 01.08.2008 have been shown at serial no.15 and 16. From Serial No.17 to 24 were out of turn promotees in block and thereafter Serial No.25 to 35, direct recruits were placed in block. The final tentative seniority list has been approved by the committee after considering the objections. It is reflected in its report dated 11.08.2015. Full Court approved the report dated 11.08.2015, hence, final seniority list was issued on 24.12.2015. Final seniority list was same as tentative seniority list. The Division Bench of the High Court deciding the writ petitions challenging the seniority list has held:

- i) roster shall be applicable in determination of seniority.

ii) fifteen promotees promoted under Rule 7(3)(a) were in excess of their quota.

iii) Promotion of fifteen promotees under Rule 7(3) has to be treated as ad-hoc promotion and they shall be placed at the bottom of seniority.

69. The Writ Petitions were allowed by Division Bench. In accordance with the judgment of the Division Bench only change in the seniority list was to displace the promotees from serial no.1 to 14 and to place it in the seniority list below direct recruits. The division bench judgment of the High Court is under challenge before us.

70. In view of the foregoing discussion, we come to the following conclusions: -

1) Promotion of fifteen officers under Rule 7(3)(a) cannot be held to be beyond their quota.

2) The promotion of fifteen officers cannot be said to be ad-hoc nor they can be directed to be put at the bottom of the seniority list.

3) The High Court even though accepted the principle that roster is applicable in the seniority but in the operative portion of the judgment in paragraph 208 did

not issue any direction to re-cast the seniority as per the roster given in the Appendix-B which is an apparent error committed by the High Court.

4) Rule 2007 having been brought in place to give effect to the judgment of this Court in **All India Judges association case, (2002) 4 SCC 247**, while interpreting the Rules 2007 the direction issued by this court have to be kept in mind and rules cannot be interpreted in a manner so as to violate the directions issued by this Court in the above judgment.

5) Rule 7(4) read with Appendix-B has to be read in the light of direction of this Court in All India's case and harmonious construction of the rule clearly indicates that roster which has been expressly made applicable for filling the post of all the three streams shall be applicable while determining the seniority.

Reliefs: -

71. In view of foregoing discussion, the seniority list dated 24.12.2015 is to be set aside. After setting aside the seniority list, two courses are open. Firstly, to remit this matter to the High Court again to re-cast the seniority list as per our direction and secondly, to finalize seniority list

in this judgment itself. We choose to adopt the second course for two reasons:

a) Already period of three years has elapsed when the tentative seniority list was published. Finalisation of seniority as early as possible is essential and necessary for administration of justice.

b) There is no dispute regarding inter-se-seniority of the promotees under Rule 7(3)(a) and issue pertaining to inter-se-seniority of out of turn promotees and direct recruits have already been finalized by us. Only exercise which is to be undertaken is to place officers of three streams in accordance with the roster as indicated in Appendix-B. After placing the officers of three streams, the seniority position as per roster comes as follows:

S.NO.	NAME	RULE
1.	Shri Keshav Chander Gupta, Addl.D&SJ (Since retired prematurely)	7(3)(a)
2.	Shri Narinder Kumar Gaur, Addl.D&SJ (since retired prematurely w.e.f 07.06.2011)	7(3)(a)
3.	Shri Parminder Pal Singh, Addl.D&SJ	7(3)(c)
4.	Shri Virinder Aggarwal, Addl.D&SJ	7(3)(b)
5.	Shri Kishore Kumar, Addl.D&SJ	7(3)(a)

6.	Shri Paramjit Singh, Addl.D&SJ	7(3)(a)
7.	Shri Sukhdev Singh, Addl.D&SJ	7(3)(c)
8.	Ms. Mandeep Pannu, Addl.D&SJ	7(3)(b)
9.	Shri Pritam Singh Dhanona, Addl.D&SJ, (Ex.S.M.)	7(3)(a)
10.	Shri Harpal Singh, Addl.D&SJ	7(3)(a)
11.	Shri Munish Singhal, Addl.D&SJ	7(3)(c)
12.	Shri Ashok Paul Batra, Addl.D&SJ	7(3)(b)
13.	Shri Amrinder Singh Grewal, Addl.D&SJ	7(3)(a)
14.	Ms. Harpreet Kaur Randhawa, Addl.D&SJ	7(3)(a)
15.	Ms. Rupinderjit Chahal, Addl.D&SJ	7(3)(c)
16.	Shri Rajinder Agarwal, Addl.D&SJ	7(3)(b)
17.	Ms. Ramesh Kumari, Addl.D&SJ	7(3)(a)
18.	Shri Jagjit Singh Chohan, Addl.D&SJ (since expired)	7(3)(a)
19.	Shri Kamaljit lamba, Addl.D&SJ	7(3)(c)
20.	Shri Tarsem Mangla, Addl.D&SJ	7(3)(b)
21.	Shri Nirmal Singh, Addl.D&SJ (Since retired prematurely)	7(3)(a)
22.	Ms. Sunita Kumari, Addl.D&SJ	7(3)(a)
23.	Shri Nirbhow Singh Gill,	7(3)(c)

	Addl.D&SJ	
24.	Shri Arunvir Vashista, Addl.D&SJ	7(3)(b)
25.	Ms. Asha Condal, Addl.D&SJ	7(3)(a)
26.	Shri Kuldeep Kumar Kareer, Addl.D&SJ	7(3)(a)
27.	Shri Jatinder Pal Singh Khumi, Addl.D&SJ	7(3)(c)
28.	Shri Jasjit Singh Bhinder, Addl.D&SJ	7(3)(b)
29.	Dr. Hemant Gopal, Addl.D&SJ	7(3)(c)
30.	Shri Surinder Singh Sahni, Addl.D&SJ	7(3)(b)
31.	Shri Kanwaljit Singh Bajwa, Addl.D&SJ	7(3)(c)
32.	Shri Sumeet Malhotra, Addl.D&SJ	7(3)(c)
33.	Shri Arun Gupta, Addl.D&SJ	7(3)(c)
34.	Ms. Jatinder Kaur-II, Addl.D&SJ	7(3)(c)
35.	Shri Mohd. Gulzar, Addl.D&SJ	7(3)(c)

72. It is further relevant to note that in view of judgment of this Court in **(2010) 15 SCC 170, All India Judges Association**, quota of 25 percent for out of turn promotees has been reduced as 10 percent w.e.f. 01.01.2011. The present seniority dispute being related to recruitment held in 2008, the reduction in quota may not be relevant in the present case.

73. In view of foregoing conclusions all appeals are allowed in following manner: -

1) The Division Bench judgment of the High Court so far as it holds that roster is applicable in the determination of seniority of members of superior judicial service is upheld.

2) The judgment of the Division bench of the High Court holding that fifteen promotees under Rule 7(3)(a) were beyond the quota and shall take position at the bottom of the seniority list is set aside.

3) The seniority list dated 24.12.2014 is set aside. The list of 35 officers arranged as per Roster as indicated above shall be treated as final Seniority list of the officers recruited in the year 2008.

74. The parties shall bear their own cost.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
OCTOBER 03, 2018.