

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 13260 of 2024

Reserved on: 01.07.2026

Decided on: 31.07.2026

Uploaded on: 31.07.2026

Dinesh Kumar Sharma

.... Petitioner.

-Versus-

State of Himachal Pradesh and others

.....Respondents.

Coram:

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes.

For the petitioner:

Mr. Sanjeev Bhushan, Senior Advocate, with
Mr. Sparsh Bhushan, Advocate.

For the respondents:

Mr. Pushpinder Jaswal, Additional advocate
General, for respondents No. 1 and 2.

Mr. T.S. Chauhan, Senior Advocate, with Mr.
Surya Chauhan, Advocate, for respondent
No. 3.

Ajay Mohan Goel, Judge:

By way of this writ petition, the petitioner has, *inter alia*,
prayed for the following relief:-

“(i) *That an appropriate writ, order or directions
may kindly be issued and the respondents may kindly be
directed to conduct the DPC from amongst the eligible
candidates including the petitioner for the post of*

Assistant Professor, ENT at IGMC & Hospital, Shimla for the year 2022 with further directions to promote the petitioner if found suitable and eligible by the DPC on and with effect from August, 2022 with all consequential benefits of pay, arrears, seniority etc. in the interest of law and justice.”

2. The case of the petitioner is that he did his Senior Residency in ENT from Indira Gandhi Medical College & Hospital, Shimla from 09.01.2017 to 04.02.2020. He was designated as an Assistant Professor in the said Department w.e.f. 11.12.2020. At the time of filing of the petition, the petitioner was pursuing his MCH, which is Three Years Course in Head Neck Surgery and Oncology from AIMS, Delhi w.e.f. 01.07.2024.

3. The grievance of the petitioner is that despite initiating the process for filling up one resultant vacancy of regular Assistant Professor in the Department of ENT at IGMC & Hospital, Shimla long back in June, 2022 by way of promotion, for which options were called and for which he had opted, Departmental Promotion Committee (DPC) was not being conducted, thereby causing immense and irreparable loss to the petitioner.

4. Learned Senior Counsel for the petitioner argued that post of Professor fell vacant in the Department of ENT, which was filled up by appointing Dr. Jagdeep Singh Thakur, who was promoted to the

said post from the post of Associate Professor. The resultant vacancy of Associate Professor was filled by promotion of Dr. Bhushan Lal. He submitted that in this backdrop, the respondents simultaneously initiated the process for filling up the resultant vacancy of Assistant Professor in the Department of ENT. By referring to communication dated 18.06.2022, Annexure P-2, learned Senior Counsel submitted that in terms of this communication, the Principal Secretary (Health) to the Government of Himachal Pradesh wrote to the Director, Health Services regarding filling up of one resultant vacancy of Assistant Professor in the Department of ENT at IGMCH, Shimla by way of promotion. He submitted that the Director (Health Services) was called upon to send service particulars of eligible and willing candidates of five GDOs./MOs. to the Department at the earliest. He submitted that in response thereto, Principal, IGMCH, Shimla vide communication dated 29.06.2022, submitted the service particulars of the petitioner, who was serving as a designated Assistant Professor in Department of ENT, IGMCH, Shimla, who, in terms of said communication, was the only eligible candidate amongst GDOs., for promotion to the post of Assistant Professor (ENT) in IGMCH, Shimla. Learned Senior Counsel submitted that the petitioner gave his option and willingness for promotion against the post of Assistant Professor, yet nothing was done by the respondents. He submitted that the vacancy which had fallen

vacant on account of promotion of Dr. Bhushan Lal to the post of Associate Professor, was to be filled in by appointing a person by way of promotion from the promotee category, in light of the law declared by the Hon'ble Supreme Court in *R.K. Sabharwal and others Vs. State of Punjab and others*, (1995) 2 SCC 745. He submitted that in similar circumstances, post, which had fallen vacant in Tanda Medical College, i.e., the post vacated by promotee, was filled in by appointing a promotee and as the petitioner was not being promoted against the post of Assistant Professor, though he was the senior-most eligible GDO, the act of the respondents was bad in law and accordingly he prayed that a mandamus be issued to the respondents to conduct a DPC of eligible candidates, including the petitioner for appointment against the post of Assistant Professor (ENT) from the promotee quota.

5. On the other hand, learned Additional Advocate General, by relying upon the reply filed by respondents No. 1 and 2, submitted that after the promotion of Dr. Bhushan Lal against the post of Associate Professor on 14.08.2022, the Department had sought necessary options from respondent No. 2, i.e., the Director of Health Services and the service particulars of the petitioner for consideration of promotion to the post of Assistant Professor were received. In the meanwhile, one Dr. Mahender Singh, a Medical Officer (Specialist in ENT), submitted a representation, stating that the Government had

recently filled one post of Assistant Professor (ENT) on 28.06.2022 by promoting Dr. Payal Gupta and, therefore, filling up of another post by way of promotion, would violate the mandate of Recruitment and Promotion Rules, in terms whereof, the post of Assistant Professor in the Specialty was to be filled 50% by way of direct recruitment and 50% by way of promotion.

6. Learned Additional Advocate General submitted that as per Dr. Mahender Singh, the resultant vacancy had to be filled in by way of direct recruitment. He submitted that the proposal qua the promotion of the petitioner as also the representation, opposing the same were under the consideration of the Government and in the meanwhile, the Director of Health Services submitted service particulars of Dr. Amit Saini, Medical Officer (Specialist in ENT), who was senior to the petitioner and after thorough examination of all relevant facts, including the representation of Dr. Mahender, the proposal received from the Director of Health Services and in the light of the judgment passed by this Court in CWP No. 907/2021, the Department referred the matter to the Advisory Department, i.e., Department of Personnel, for its opinion.

7. The Department of Personnel advised that though the vacancy had arisen on account of the promotion of a candidate, but in order to maintain the 50:50 ratio, as per the Recruitment & Promotion

Rules, the post was required to be filled by way of direct recruitment. Learned Additional Advocate General submitted that in light of the said advice of the Department of Personnel, the Department decided to fill the vacancy which had arisen on account of the promotion of Dr. Bhushan Lal by way of direct recruitment through the Himachal Pradesh Public Service Commission and the proposal was referred to the Finance Department, which remained under active consideration. He, thus, submitted that in the light of the above, there was no merit in what was being contended by the petitioner.

8. During the pendency of the writ petition, CMP No. 27772 of 2025 was filed by the applicant for his impleadment and in terms of order dated 05.03.2026, the same was allowed and the applicant in the said miscellaneous application was ordered to be impleaded as respondent No. 3. Learned Senior Counsel appearing for respondent No. 3 has also adopted the arguments addressed by learned Additional Advocate General. He further submitted that the vacancy vacated on promotion of Dr. Bhushan Lal had to be filled in by way of direct recruitment, as earlier vacancy had been filled in by way of promotion, which indeed was a newly created vacancy.

9. Having heard learned Senior Counsel for the petitioner as also learned Additional Advocate General and having perused the Roster Register, which was made available for the perusal of the Court,

in terms of the directions passed by it, this Court is of the considered view that there is no merit in the present writ petition.

10. Facts as they emerge from the pleadings as also the relevant record produced for the perusal of the Court by the respondent-State are that in terms of the Himachal Pradesh Medical Education Service Rules, the post of Assistant Professor (ENT) is to be filled in 50% by way of promotion and 50% by way of direct recruitment.

11. The Roster Register, which has been made available for the perusal of the Court maintained in the respondent-College, demonstrates that the initial cadre strength of the cadre of Assistant Professors in the said Department was two. That being the case, there was no issue with regard to the implementation of the Roster of 50% appointment by way of promotion and 50% by way of direct recruitment. In fact, record demonstrates that initially, one Dr. Ramesh Azad was appointed by way of direct recruitment on 10.06.2005 and Dr. R.S. Minhas was promoted against the post on 19.11.2008. Dr. Azad was promoted against the post of Associate Professor on 19.01.2011 and Dr. Jagdeep Singh Thakur was thereafter recruited by way of direct recruitment, who joined as such on 30.08.2013. Dr. R.S. Minhas was promoted against the post of Associate Professor on 31.12.2011 and Dr. Madhuri Dadwal was promoted against the vacated post on 31.12.2011 itself. Thereafter, Dr. Jagdeep Thakur was promoted as an

Associate Professor on 01.11.2018 and the resultant vacancy was again filled up by way of direct recruitment by the appointment of Dr. Ishan Chauhan on 27.12.2019. Similarly, on promotion of Dr. Madhuri Dadwal, Dr. Bhushan Lal was promoted against the post of Assistant Professor on 14.08.2017.

12. One additional post of Assistant Professor was sanctioned on 18.04.2022. At the time of the creation of this post, Dr. Bhushan Lal was occupying one post, having been promoted against the post of Assistant Professor and Dr. Ishan Chauhan was occupying the post, having been directly recruited. In terms of the Recruitment and Promotion Rules, the third post of Assistant Professor was to be filled in by way of promotion and Dr. Payal Gupta was promoted as Assistant Professor on 28.06.2022. This is also evident from the Roster Register.

13. Now, the point is that after the promotion of Dr. Bhushan Lal against the post of Associate Professor, who was promoted as such on 14.08.2022, whereas the contention of the petitioner is that the said post should be filled in by way of promotion as the post has been vacated by a promotee, the contention of the State as well as the private respondent is that in order to maintain the ratio of 50:50, the post now has to be filled in by way of direct recruitment, otherwise the same will amount to excess representation of the promotees.

14. This Court is of the considered view that as the Recruitment and Promotion Rules provide for 50% quota, each to the category of promotees and direct recruits, this quota has to be harmoniously maintained and the maintenance of this quota will not be determined by the fact as to how many incumbents of which category at a particular time are occupying the post. This is for the reason that the number of posts in the cadre is an odd number.

15. Had the cadre been of even number, then obviously there would have been an even distribution of the number of seats amongst the two categories. However, as the cadre consists of odd number, therefore, at a particular time, there will be two incumbents of one category and one incumbent of the other category holding the post.

16. To maintain the 50:50 ratio, there has to be a rotation in the category which holds the third post, so that harmony is maintained with regard to the 50:50 ratio and there is neither any over-representation of anyone nor any under-representation of anyone.

17. In light of the fact that when the third post came into existence, the same was filled up by way of promotion, now obviously, resultantly, the next time, when a post becomes available, it has to be filled in from the other category, that is the category of direct recruits.

18. In present-like situation where the number of posts is odd, the general principle that the category which vacates the post will get

the post shall not be applicable. Otherwise also, here is a case where we are dealing with recruitment to a post, be it by way of direct recruitment or promotion, from different sources and not of reservation *per se*. Therefore, the judgment of the Hon'ble Supreme Court in *R.K. Sabharwal and others Vs. State of Punjab and others (supra)*, relied upon by learned Senior Counsel for the petitioner has no applicability in the facts of this case.

19. In fact, this issue is not even *res integra*, as the Division Bench of this Court in *Dr. Nikita Verma Versus State of Himachal Pradesh and others, CWP No. 907 of 2021*, decided on 13.08.2021, while dealing with a similar situation, was pleased to hold as under:-

“11. We have heard learned counsel for the parties and have also gone through the records of the case.

12. Respondents No. 1 and 2 have specifically submitted that to maintain prescribed ratio of 50:50 between promotee incumbents and direct recruits, roster provided in explanation to Clause 6 of Chapter 13 of Handbook on Personal Matters, Volume I, will be applicable, which reads as under:

“6. Relative seniority of direct recruits and promotees: -

(a) Provision in general: 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 Recruitment Rules.

Explanation: -

A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where the reservation for each method is 50% the roster will run as follows: (1) Promotion, (2) Direct Recruitment, (3) Promotion, (4) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

Illustration: -

When 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below 3 promotees. Where the quotas are 50% each, every direct recruit shall be ranked below a promotee. If for any reason, a direct recruit or a promotee ceases to hold the appointment in the grade, the seniority list shall not be re-arranged merely for the purpose of ensuring the proportion referred to above.”

13. Respondents have further contended that column No. 10 of the proforma for R & P Rules was amended and term ‘posts’ was incorporated in place of term ‘vacancies’, which as per respondents, necessarily meant that the roster is to conclude on the post and once the roster is concluded then the ensuing vacancies shall be filled from the quota (direct or promotion) in which vacancy had occurred.

14. *There is no dispute that cadre strength is always measured by the number of posts comprising the cadre and there must be a post in existence to enable the vacancy to occur. This, however, will not imply that the application of roster will come to an end on filling of the entire cadre strength. Application of roster is not the end but only a mean to achieve the object.*

15. *The object is defined by R & P Rules, wherein specific quota of 50% each for direct and promotee candidates has been reserved as source for recruitment for the post of Assistant Professor. In case the interpretation adopted by respondents is accepted, reservation of 50% of the total posts for direct candidates will never be achieved and practically it shall be 60% in favour of promotees and 40% for direct recruits. Such an interpretation, that stares at the face of object sought to be achieved, cannot be countenanced.*

16. *Thus, such an understanding, in our view, is not legally sustainable for the simple reason that it impedes at the very basis of Recruitment and Promotion Rules providing for reservation in the ratio of 50 : 50 between promotees and direct recruits.*

17. *While dealing with almost identical proposition in State of Punjab and others vs. Dr. R.N. Bhatnagar and another, (1999) 2 SCC 330, Hon'ble Supreme Court has held as under:*

"11. On the other hand, the situation which has fallen for our consideration in the present case in the light of Article 16(1) is squarely covered by a decision of this Court in Paramjit Singh's 11 case (supra) as clarified

by a latter decision in the very same case reported in [1982] 3 SCC 191. In the aforesaid main case, D.A. Desai, J, speaking for the bench of two learned Judges of this Court, had to consider in paragraph 11 of the Report a recruitment rule which permitted fixed percentage of posts to be filled up in the given cadre from two different sources, namely, promotees and direct recruits. Rule 6 of the Punjab Police Service Rules, 1959, which came for consideration in that case provided for a method of recruitment from two different sources i.e. 80% by promotion from the rank of Inspectors and 20% by direct recruitment. Examining the working of the aforesaid quota rule for recruitment in the light of the relevant rotational scheme of vacancies in the cadre to which such recruitment was to be made, the following pertinent observations were made in paragraph 11 of the Report: (SCC p. 485)

"11. Where recruitment to a cadre is from two sources and the Service Rules prescribe quota for recruitment for both sources a question would always arise whether the quota rule would apply at the initial stage of recruitment or also at the stage of Confirmation, Ordinarily, if quota is prescribed for recruitment to a cadre, the quota rule will have to be observed at the recruitment stage. The quota would then be co-related to vacancies to be filled in by recruitment but after recruitment is made from two different sources they will have to be integrated into a common cadre and while so doing, the question of their inter se seniority would surface,....."

As there was some doubt about the observations found in the aforesaid paragraph 11 and as to how the recruitment rule in question was to be operated in the light of the quota prescribed therein and the rotational method of achieving the said quota of recruitment from two sources, a later Bench clarified the position in the subsequent judgment in the case of Paramjit Singh (supra). Another bench of two learned Judges, wherein D.A. Desai, J., was common, clarified the observation in paragraph 11 of the earlier Report as under: (SCC pp. 195-96, paras 6 and 7)

“6. In our opinion there is no ambiguity in the judgment. Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continues officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well-known in-service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from

what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who came to the service at an advanced age may retire, early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said : (SCC p. 486, para 14: SCC (L&S) p. 318)

'The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota.' The quota in the present case is 4:1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation. The sentence which seems to have created a difference of opinion reads as under : (SCC p.486, para 14 : SCC (L&S) p.318)

"A roster is introduced while giving confirmation ascertaining every time which post has fallen

vacant and recruit from that source has to be confirmed in the post available to the source."

7. *The sentence cannot be read in isolation. It has to be read with the earlier sentence that the quota rule would apply to the vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. The Court then proceeded to say that if the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation."*

The aforesaid decision which squarely applies to the facts of the present case, therefore, leaves no room for doubt that when under the recruitment Rule 9 in question there is no reservation of any given category of candidates like SCs, STs or BCs to the posts in the cadre of Professors, appointments to the posts in the cadre have to be made in the light of the percentage of vacancies in the posts to be filled in by promotees or direct recruits. The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. As stated earlier, as the roster for 3 promotees and one direct recruit moves forward, there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee. Irrespective of the identity of the person retiring, the post is to be filled by the onward motion of 3 promotees and one direct recruit Consequently, learned counsel for the appellant and learned senior counsel for

the intervenor were right when they contended that the High Court in its impugned judgment had patently erred in invoking the ratio of decision of this Court in R.K. Sabharwal's case (supra) which was rendered in an entirely different context for resolving an entirely different controversy which did not arise on the facts of the present case. They were also right in contending that the ratio of the decision of this Court in Paramjit Singh's case (supra) read with the decision of this Court in the same case reported in [1982] 3 SCC 191 would get squarely attracted in the facts of the present case. Once that conclusion is reached, the result becomes obvious. Whenever in the cadre of Professors of Ophthalmology vacancies arise for being filled in at any given point of time, those vacancies in the posts have to be filled in by operating the roster in such a way that available vacancies get filled up by allotting 75% of them to departmental promotees and 25% to direct recruits....."

18. *The above noted exposition keeps none in the realm of doubt as to how the roster is to be applied in respect of appointment to the posts in a particular cadre which admits of entry from different source.*

19. *We are also dealing with the fact situation where the source of recruitment to the post of Assistant Professor in Himachal Pradesh Medical Education Service is from two sources i.e. direct 15 recruitment and by way of promotion in the ratio of 50 : 50. Thus, we have no hesitation to hold that in such situation each ensuing vacancy in the cadre shall be filled by applicable roster and not otherwise.*

20. In the Department of Radiology, IGM, Shimla, undisputedly, out of first 4 posts, 2 were filled by promotee candidates and next 2 were filled by direct recruits. It is stated that the appointments to first 4 posts were not made in accordance with applicable roster as first 2 posts went to promotees and next 2 posts went to direct recruits, whereas the 2nd post should have gone to direct recruit, 3rd post to promotee and then 4th post again to direct recruit. Be that as it may, the appointments to first 4 posts in the manner noted above, will not be of much relevance for deciding the issue before us. Such factor may be relevant for deciding the dispute, if any, as to inter se seniority between the incumbents holding first 4 posts, with which we are not presently concerned.

21. There is no dispute that 5th post again went to promotee candidate. Though, by filling of 5th post, the appointments to entire cadre strength were made but what remained to be achieved was the fulfilment of quota/reservation in the ratio of 50 : 50 between promotees and direct recruits. In this manner, the promotees got 16 60% reservation against prescribed 50% quota and direct recruits could get only 40% instead of 50% quota. In case the vacancy now available is again filled by promotee candidate, the discrimination already meted to direct recruits shall be perpetuated. On the other hand, the appointment on existing vacant post by direct recruit shall achieve the fulfillment of the respective quota of 50% prescribed for direct recruits and in future adherence to exposition in State of Punjab and others vs. Dr. R.N. Bhatnagar and another (supra) shall serve the

ends of applicable R & P Rules and in this manner, the balance shall also be maintained between the promotes and direct recruits in achieving their respective quota of reservation to the extent of 50% each.

22. *In light of above discussion, we have no hesitation to hold that the action of respondents No. 1 and 2 to initiate the process for filling up of vacancy to the post of Assistant Professor in the Department of Radiology, IGMC, Shimla by promotion is wrong, illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution of India. Accordingly, the process so issued by respondents 1 and 2 by issuance of letter dated 6.2.2021 (Annexure P-3) and letter dated 15.2.2021 (Annexure P-4) is quashed and set aside. It is held that the existing vacancy to the post of Assistant 17 Professor in the Department of Radiology, IGMC, Shimla is required to be filled by initiation of process for direct recruitment from the eligible candidates.*

23. *The petition is accordingly disposed of in the aforesaid terms, so also the pending miscellaneous applications, if any, leaving the parties to bear their own costs.”*

20. In fact, this view has again been reiterated by the Hon'ble Division Bench in LPA No. 112 of 2021, titled *Dr. Arun Singh Thakur Versus State of H.P. and others*, decided on 12.06.2024. Following findings returned in the said judgment are also relevant:-

“21. *In view of above noted exposition of law, there can be no doubt as to how the roster is to be*

applied in respect of appointment to the posts in a particular cadre which admits of entry from different sources.

22. *In the given case, we are dealing with the fact situation where the source of recruitment to the post of Assistant Professor in Himachal Pradesh Medical Education Service is from two sources i.e. direct recruitment and by way of promotion in the ratio of 50:50. Thus, we have no hesitation to hold that in such a situation each ensuing vacancy in the cadre shall be filled by applying roster and not otherwise.*

23. *This is precisely what has been held by a Division Bench of this Court, in which one of us (Justice Tarlok Singh Chauhan) was member, in CWP No. 907/2021, titled as Dr. Nikita Verma vs. State of H.P., decided on 13.8.2021.*

24. *Learned counsel for the petitioner would then argue that the learned Single Judge has erred in not deciding the case on the basis of R.K. Sabharwal vs. State of H.P., 1995(2) SCC 745, which provides for reservation as understood in article 16(4) of the Constitution of India.*

25. *However, we find no merit in this arguments more particularly, when an identical issue has already been considered by learned Division Bench of this Court in Ram Sarup Kalia vs. State of H.P., Latest HLJ 2005 (HP) (DB) 520, wherein it was observed as under:-*

“29. From a perusal of the various judgments of the Apex Court the position which clearly emerges, is that the State can lay down a policy with

regard to promotion. The State also has the power to amend the policy with regard to promotion. The State also has the power to amend the policy even if it to the detriment of certain class of employees. The only valid ground to challenge such a policy is that the same violates the mandate of Articles 14 and 16 of the Constitution of India.

30. The judgments relied upon by the petitioners turned on the words of the rules, which were to be interpreted in each of those cases. From a perusal of the judgments of the Apex Court cited above, it cannot be said that the Supreme Court has held that in every case, where quota is prescribed for recruitment from two or more sources, it should always be related to vacancies and in no case can it be applied to post. This would depend on the rules in each case and the circumstances under which the rule has been framed. In fact, the Supreme Court itself in R.K. Sabharwal's case has deprecated the practice of operating a roster ever after the quota has been reached. It has also stated that concept of vacancies has no reliance in operating the percentage of reservation. The argument of the petitioners is that this judgment only relates to cases of reservations and not to cases of recruitment from two 16 different sources. The answer to this argument lies in the observation of the Apex Court case in All India Judges' Association case wherein the Supreme Court has again, in no uncertain terms stated that wherever, there is a roster once the quota is filled then the roster should not be applied any further."

26. *It is not in dispute that Civil Appeal No. 3606 of 2008 that was filed against the aforesaid judgment has been dismissed by the Hon'ble Supreme Court on 27.4.2017.*

27. *It would be noticed that this Court while distinguishing the judgment rendered by the Hon'ble Supreme Court in R. N. Bhatnagar's case (supra), held that it cannot be said that in every case, where quota is prescribed for recruitment from two or more sources, it should always be related to 'vacancies' and in no case can it be applied to 'post', rather, this would depend on the rules in each case and the circumstances under which the rule has been framed.*

28. *Even otherwise, this issue too has been considered by the Hon'ble Supreme Court in Srikant Roy's case (supra), wherein in paras 19 to 21, it was observed as under:-*

19. *Resultantly, appointments made prior to 2004 were governed by the Rules as applicable at the relevant time. As per that dispensation, the direct recruits quota was 33% of the total posts. That was obviously in excess of 25% now specified in the amended Rules (as amended on 17 20.08.2004 pursuant to the decision of this Court). Notably, the State of Jharkhand had filed an affidavit in C.A.No.1867/2006 before this Court in which it has been stated that no vacancy against 25% quota for direct recruitment existed in the State of Jharkhand at that time. This affidavit was filed on 26th August 2008 after the amended Rules were notified and came into force w.e.f. 20th August 2004. Thus, notification for filling up of 34*

posts of Additional District Judge through Limited Competitive Examination from amongst the members of Jharkhand Subordinate Judges having more than 5 years of experience and 18 posts from merit-cum-seniority basis amongst the Civil Judge (Senior Division), was issued in 2008 on the basis that no vacancy against the posts of direct recruit quota was available. That stand is reiterated even now in the affidavit filed by the High Court. The High Court in the impugned judgment has committed manifest error in not considering these relevant facts about the vacant posts for direct recruits as on 20.08.2004 - before recording a finding against the High Court and the State Government and to reject their stand that no vacancy against the quota of direct recruit was available as on 30.04.2008.

20. Indeed, the High Court in the impugned judgment has adverted to the decision of this Court in All India Judges' Association & Ors. Vs Union of India & Ors.[1] which has enunciated the principle of roster and the ratio to be followed for the post of Additional District Judge. Indisputably, pursuant to the decision of this Court the Rules were amended, which came into effect from 20th August 2004. In paragraph 27 to 29 of the said decision, this Court has considered the question regarding the 18 method of recruitment to the post in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. The same reads thus:

“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-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.

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 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. 20 (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 "meritcum-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.” (emphasis supplied)

21. Once it is found that no post against the quota of direct recruitment was available as on 30th April, 2008, no fault can be found with the selection process commenced by the High Court for appointment in the cadre of Jharkhand Superior Judicial Service by promotion on the basis of merit through Limited

Competitive Examination. The High Court in the impugned judgment has glossed over the effect of filling up the vacancies in the ratio of 25:25, which inevitably will exceed the quota of posts for direct recruits as on 30.04.2008. That would disturb the roster point and is impermissible in terms of Rule 8 as amended.

29. *Before parting we need to observe that we are really at complete loss as to on what basis the petitioner has been agitating firstly before the learned writ court and now before this court when the Rules are absolutely clear, which provide for ratio of 50:50 between promotee incumbents and direct recruits.*

30. *Once there are two posts, obviously, one post would come to each category and any other interpretation would only lead to absurdity and discrimination, which has to be avoided 22 and above all, would only lead to unjust results, which could never have been intended by the rule-makers.*

31. *In view of aforesaid discussions and for the reasons stated hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed, with costs of Rs. 25,000/- to be paid to the H.P. High Court Advocates Welfare Fund. Pending application(s), if any, also stands disposed of.”*

21. Therefore, in light of the above discussion, this Court has no hesitation in holding that the resultant vacancy, which is available on account of promotion of Dr. Bhushan Lal, is to be filled in by way of direct recruitment and not by way of promotion. In case this post is

offered to a promotee, then the same will amount to over representation of the promotees. As the additional post at the first instance, was filled in by way of promotion, the resultant vacancy which has arisen in the Department, has to be offered to a direct recruit. The resultant vacancy need not be on account of the promotion of the incumbent who was appointed by way of promotion on the additional post because in order to maintain the ratio of 50:50 for recruitment in the Cadre to the categories of promotees and direct recruits, the next resultant vacancy, be it a vacancy created by promotee or direct recruit, has to be offered to a direct recruit.

22. Accordingly, in light of the above discussions, as this Court does not find any merit in the present writ petition, the same is dismissed. Interim stands vacated. Pending miscellaneous applications, if any, also stand disposed of. Roster Register and the relevant record stand returned to the office of learned Advocate General.

(Ajay Mohan Goel)
Judge

July 31, 2026

(bhupender)