REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2374 OF 2020
(ARISING OUT OF SLP (C) NO. 24206 OF 2018)

SUJATA KOHLI ….APPELLANT(S)

Vs.

REGISTRAR GENERAL, HIGH COURT OF DELHI & ORS ….RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari J.

PRELIMINARY AND BRIEF OUTLINE

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 21.08.2018 as passed by the High Court of Delhi at New Delhi in W.P. (C) No. 3157 of 2015, whereby the High Court dismissed the petition filed by the appellant, a member of Delhi Higher Judicial Service[1], seeking to challenge the constitutional validity of Rule 27 of the Delhi Higher Judicial Service Rules, 1970[2] and the Full Court resolutions dated 28.04.2009,

1 'DHJS' for short.
2 Hereinafter also referred to as 'the Rules of 1970'.

15.01.2010 and 27.01.2011[3] concerning the criteria for appointment of a member of higher judicial service to the post of District Judge and Sessions Judge or its equivalent.

3. While passing the order impugned, the High Court upheld the gradual implementation of the eligibility criteria for promotion to the post of District and Sessions Judge or equivalent with reference to the gradings in the Annual Confidential Reports[4] in five years preceding the base year of consideration. However, while concluding on the matter, the High Court also made certain observations on desirability of uniform norms for award of such gradings; and issued directions for evolving uniform grading system for future implementation.

RELEVANT RULES AND FULL COURT RESOLUTIONS

4. For comprehension of the principal submissions and the issues raised in this appeal, appropriate it would be to take note of the relevant rules and the relevant part of the impugned resolutions at the outset.

4.1. The relevant provisions concerning recruitment to the posts in the cadre of Higher Judicial Service are contained in Rule 7 in the Rules of 1970. Rule 7(1), in its present form, reads as under:-

> "**7. Regular recruitment.-** (1) Recruitment to the posts in the cadre of District Judge at Entry Level shall be as under:
>
> (a) 65 percent by promotion from amongst the Civil Judges (Senior Division), having a minimum ten years service in the cadre of Delhi Judicial Service, on the basis of principle of merit-cum-seniority;

3 Hereinafter also referred to as 'the impugned resolutions'.
4 'ACR' or 'ACRs' for short

(b) 10 percent 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 percent of the posts shall be filled by direct recruitment from amongst the persons eligible as per rule 7C on the basis of the written and viva voce test, conducted by the High Court."

4.1.1. The provisions contained in Rule 7A of the Rules of 1970, as substituted by the notification dated 27.10.2009 and amended by notification dated 22.12.2011 could also be noticed as under:-

"**7A. Selection for Promotion on the basis of merit and suitability.-** Recruitment by promotion under clause (a) of sub-rule (1) of Rule 7 above shall be made by selection on the basis of merit-cum-seniority."

4.1.2. The matters relating to appointment, probation and confirmation are provided in Rules 12 to 15 in Part IV of the Rules of 1970, which are as follows:–

"**12.** (1) Persons appointed to the service at the initial recruitment shall stand confirmed with effect from the date of appointment.

(2) All other candidates on appointment to permanent post shall be on probation for a period of two years.

EXPLANATION: - The period during which an officer holds a temporary post will be counted towards probation but he will be confirmed only when a permanent post is available.

13. All persons appointed' to the service on probation shall be confirmed at the end of the said period of two years.

Provided that the Administrator may, on the recommendation of the High Court, extend the period of probation, but in no case shall the period of probation extend beyond the period of three years.

14. The services of a person appointed on probation are liable to be terminated without assigning any reason.

15. After successful completion of the period of probation the officer shall be confirmed in the service by the Administrator in consultation with the High Court .and the same shall be notified in the Delhi Gazette."

4.1.3. In Part VI of the Rules of 1970, the provisions regarding pay and allowances have been made; and these provisions also specify the method of assessment for granting Selection Grade and Super Time Scale. Rules 18 to 20 in this Part VI read as under[5]: –

"**18.** The pay scales of the Service shall be as follows:

1.	District Judges Entry level Time Scale (Addl. District Judges)	Rs,16750 -400- 19150- 450- 20500
2.	Selection Grade [limited to 25% of cadre posts of District Judges Entry level Time Scale (Additional District Judges) and will be given to those having not less than five years of continuous service in the cadre on assessment of merit-cum-seniority]	Rs,18750 -400- 19150- 4502185 0-500- 22850
3.	District Judges (Super time scale) (This scale would also be available to 10% of the cadre strength of District Judges, and would be given to those who have put in not less than three years of continuous service in selection grade on assessment of merit-cum-seniority)	Rs,22850 -500- 24850

19. The initial pay of a direct recruit shall be the initial pay in the time scale mentioned in rule 18.

5 Rule 18 came to be substituted by way of the notification dated 22.10.2008.

> Provided that the Administrator may, on the recommendation of the High Court, give advance increments to suitable candidates appointed to the service.
>
> **20.** The pay of a promoted officer shall be fixed in the aforesaid time scale in accordance with the financial rules, regulations, orders, or directions, applicable from time to time, to members of the IAS."

4.1.4. We may also take note of Rule 26 in Part VII of the Rules of 1970 which reads as under: –

> "**26.** Direct recruits will have to produce before appointment a certificate of physical fitness in accordance with the standards prescribed for the IAS."

4.1.5. Rule 27 of the Rules of 1970, providing for residuary matters, that had been questioned by the appellant as being *ultra vires*, reads as under: –

> "**27. RESIDUARY MATTERS:-** In respect of all such matters regarding the conditions of service for which no provision or insufficient provision has been made in these rules, the rules, directions or orders for the time being in force, and applicable to officers of comparable status in the Indian Administrative Service and serving in connection with the affairs of the Union of India shall regulate the conditions of such service."

5. Having taken note of the rules that are directly relevant for the case at hand as also the rules that may have some bearing on the issues raised, we may now refer to the Full Court resolutions which form the subject matter of this litigation.

5.1. In its Full Court meeting dated 28.04.2009, the High Court adopted a resolution to the effect that, for the purpose of being selected/promoted as District and Sessions Judge, a candidate of Higher Judicial Service ought to fulfil the criteria of possessing at least two 'A' (very good) and three 'B+' (good) in the ACR gradings for the preceding five years from the

date of consideration for such appointment. This Full Court Resolution dated 28.04.2009 reads as under:-

> "Discussed. It was resolved as under:-
>
> (i) The following shall be adopted as the zone of consideration for selection of officers for appointment as District Judges:-

No. of Vacancies	No. of officers within zone of consideration
1	5
2	8
3	10
4	12
5	14
6	16
7	18
8	20
9	22

> In the case of Sessions Judge, the zone of consideration would be restricted to officers already appointed as District Judges including on proforma basis.
>
> (ii) The officers who would be, or likely to be, in the zone of consideration for appointment/selection to the post of District Judge in a particular year shall be under the control of the Committee of Inspecting Judges headed by Hon'ble the Chief Justice in the preceding year and in the year in question.
>
> (iii) For evaluation of such officers, as are mentioned in the preceding clause, detailed remarks shall be recorded in the ACRs by the Committee mentioned above.
>
> (iv) For evaluation of the officers within the zone of consideration for "selection by merit", the following criteria shall be taken into account:-
> (a) ACR grading for the last 5 years in which the gradings for at least 2 years (including the 5th year) must be minimum "A" (Very Good), the officer having secured in the remaining 3 years no less than "B+" (Good) grading. However, in the

case of SC/ST officers, this criteria shall be relaxed so as to require minimum "B+" (Good) grading in each of the 5 years.

(b) Vigilance report.

(c) Disposal figures for the last 5 years.

(d) Administrative capabilities.

(e) General reputation for honesty & integrity and conduct."

5.2. However, the prescription aforesaid was modified by another Full Court resolution dated 15.01.2010 to the effect that for being selected/promoted as District and Sessions Judge, a candidate of Higher Judicial Service ought to possess the minimum 'A' (very good) grading in ACRs of each of the five years under consideration. It had been the case of the respondent High Court that such criteria were adopted as being equivalent to the revised promotion criteria in the Indian Administrative Services[6]. The relevant part of the said resolution dated 15.01.2010 reads as under:-

> "(a) The clause regarding relaxation in ACR gradings for SC/ST officers is deleted.
>
> (b) The criteria in para 9(iv) (a) is modified so as to require ACR gradings for each of the five years under consideration to be minimum 'A' (Very Good) for all categories."

5.3. As against the aforesaid resolution dated 15.01.2010, the High Court received certain representations, including those from Delhi Higher Judicial Services Association as also from Delhi Judicial Services Association. These representations were considered by the Full Court of the High Court in its meeting held on 06.07.2010 wherein it was resolved that a Committee be constituted by the Chief Justice to look into the issue of desirability of change of criteria for appointment to the post of District Judge. Pursuant to this resolution, Hon'ble the Chief Justice of the High

6 'IAS' for short

Court, by his order dated 27.08.2010, constituted a committee comprising of four Hon'ble Judges. This Committee, in its report dated 08.10.2010, recommended for implementation of the revised criteria in a phased manner as under:-

> "We find that the post of District Judge is to be manned by officers of Delhi Higher Judicial Service in Super Time Scale of Rs.22850-24850 (pre-revised). Having regard to the revised guidelines as circulated vide Govt. of India, DoPT O.M. No. 22011/3/2007-Estt(D) dated 18th February 2008 wherein it has been mentioned that the DPC may ensure that for promotion to the scale of Rs.18,400-22,400 (pre-revised) and above, the prescribed benchmark of 'Very Good' is invariably met in all ACRs of five years under consideration, we are of the opinion that the existing criteria for appointment to the post of District Judge requiring ACR gradings for each of the five years under consideration to be minimum 'A' 'Very Good) for all categories, should be maintained. However, since the criteria of "at least two ACR gradings of 'A' (Very Good) and remaining three ACR gradings of 'B +' (Good)" fixed on 28th April, 2009 was changed to "ACR gradings for each of the five years to be minimum 'A' (Very Good)" on 15th January 2010, we are of the opinion that the implementation of the said criteria should be in phased manner as under:-
>
> (i) At least two ACR gradings of 'A' (Very Good) and remaining three ACR gradings of 'B+' (Good) out of the ACR gradings for the last 5 years under consideration (2004-2008) for the year 2009;
>
> (ii) At least three ACR gradings of 'A' (Very Good) and remaining two ACR gradings of 'B+' (Good) out of the ACR gradings for the last 5 years under consideration (2005-2009) for the year 2010;
>
> (iii) At least four ACR gradings of 'A' (Very Good) and remaining one ACR grading of 'B+' (Good) out of the ACR gradings for the last 5 years under consideration (2006-2010) for the year 2011; and
>
> (iv) ACR grading for each of the five years to be minimum 'A' (Very Good) for the last 5 years under consideration (2007-2011) for the year 2012 and onwards.

> We recommend that the cases for appointment to the post of District Judge be considered/reviewed applying the aforesaid criteria as proposed."

5.3.1. The aforementioned recommendations of the Committee were accepted by the Full Court in its meeting held on 27.01.2011.

5.4. In the manner aforesaid, the respondent High Court took the decision to implement the revised criteria envisaged by the aforesaid resolution dated 15.01.2010 in a phased manner; and the requirements came to be provided that for appointment to the post of District and Sessions Judge, a candidate should, in the five years preceding the base year, carry the ACR gradings as follows:

> (i) for the year 2009, at least two 'A' (very good) and the remaining three 'B+' (good);
>
> (ii) for the year 2010, at least three 'A' (very good) and the remaining two 'B+' (good);
>
> (iii) for the year 2011, at least four 'A' (very good) and the remaining one 'B+' (good); and
>
> (iv) for the year 2012 and onwards, a minimum of five 'A' (very good).

5.5. From the material placed on record by the respondent No. 1 with an application (IA No. 134092 of 2019), it appears further that the Administrative and General Supervision Committee of the High Court, in its meeting held on 13.09.2013, resolved, *inter alia*, that the post of Principal Judge, Family Court being equivalent to that of District and Sessions Judge, the same criteria be also adopted therefor. This resolution was duly given

effect to in the Full Court meeting by circulation dated 28.01.2014 as also in the subsequent Full Court resolutions.

5.6. With reference to the grievance of the appellant against denial of promotion to the post of District and Sessions Judge or equivalent, we may also take note of a few of the relevant subsequent Full Court resolutions, that have been placed on record by the respondent No. 1 with the said application, IA No. 134092 of 2019.

5.6.1. It is noticed that for the purpose of the Full Court meeting by circulation dated 09.01.2015, the position obtainable in the wake of the aforesaid three resolutions dated 28.04.2009, 15.01.2010 and 27.01.2011, was detailed out in the note prepared by the registry of the High Court. Thereafter, the Full Court proceeded to adopt the resolution for appointment against the vacancies that had arisen to the posts of District and Sessions Judge and Principal Judge, Family Court for various reasons, including those of elevation of some of the incumbents to the High Court. Noticeably, the cases of all the persons falling in the zone of consideration were considered, including that of the appellant; and while making recommendations for appointment, some of the incumbents, including the appellant, were not found fit for such appointment on the basis of the criteria laid down in the aforesaid resolutions dated 28.04.2009, 15.01.2010 and 27.01.2011. The relevant part of this resolution dated 09.01.2015 reads as under: –

"(i) Mr. Yogesh Khanna, Ms. Ravinder Kaur and Mr. Talwant Singh, already District Judges under next below rule be recommended for appointment as District Judge on regular basis w.e.f. 15.12.2014 against three vacancies of District Judges which have arisen w.e.f. 15.12.2014 consequent upon elevation of Hon'ble Mr. Justice P.S. Teji, Hon'ble Mr. Justice I.S. Mehta and Hon'ble Mr. Justice R. K. Gauba as Additional Judges of this Court on 15.12.2014.

Against the vacancy fallen vacant consequent upon elevation of Hon'ble Ms. Justice Sangita Dhingra Sehgal as Additional Judges of this Court, the names of officers in the zone of consideration were considered and it was decided that on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011 , the name of Mr. T.R. Naval, DHJS be recommended for appointment to the post of District Judge on regular basis with effect from the date he takes over.

Against the consequential vacancies on account of District Judges being on deputation, the names of officers in the zone of consideration were considered and it was decided that on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011, the names of Mr. Rakesh Sidhartha, Mr. Amar Nath, Mr. Pradeep Chadha and Mr. Brijesh Sethi, DHJS be recommended for appointment to the post of District Judge under next below rule with effect from the date they take over. Since Ms. Asha Menon, DHJS is on deputation as Member Secretary, NALSA, her name be also recommended to the Govt. of NCT of Delhi for appointment as District Judge on proforma basis with effect from the date her juniors take over.

Mr. S.C. Malik, Mr. R. P.S. Teji, Mr. S.C. Rajan, Mr. Mahavir Singhal, Mr. D.K. Malhotra, Mr. Sukhdev Singh, Mr. Rajnish Bhatnagar and Mr. Narender Kumar Sharma, DHJS were not found fit for appointment to the post of District Judge on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011.

The recommendation for appointment of Mr. Brijesh Sethi, DHJS to the post of District Judge under next below rule be made to the Administrator, NCT of Delhi on receipt of notification of appointment of Ms. Kiran Nath, DHJS as

Principal Secretary (Law, Justice & Legislative Affairs), Govt. of NCT of Delhi.

On receipt of notification of appointment as District Judges, their postings be made as per Annexure'X'.

(ii) The name of Mr. Girish Kathpalia, already Principal Judge, Family Courts under next below rule be recommended for appointment as Principal Judge, Family Courts on regular basis with effect from the date Shri T.R. Naval relinquishes the charge of the post of Principal Judge, Family Courts, Delhi.

Against the consequential vacancies of Principal Judge, Family Courts, the names of officers in the zone of consideration were considered and on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011, the names of Ms. Poonam A. Bamba, Mr. A.S. Jayachandra, Mr. Deepak Jagotra, Mr. Braj Raj Kedia and Mr. Yashwant Kumar, DHJS be recommended for appointment to the post of Principal Judge, Family Courts, Delhi for the districts mentioned against their names on regular basis with effect from the date they take over:-

Sl.No.	Name of the Officer (Mr. Ms.)	District
1.	Poonam A. Bamba	South, Saket
2.	A.S. Jayachandra	North-East, Vishwas Nagar
3.	Deepak Jagotra	South-East, Saket
4.	Braj Raj Kedia	Shahdara, Karkardooma
5.	Yashwant Kumar	West, THC

Mr. S.C. Malik Mr. R.P.S. Teji, Mr. S.C. Rajan, Mr. Mahavir Singhal, Mr. D.K. Malhotra, Mr. Sukhdev Singh, Mr. Rajneesh Bhatnagar, Mr. Narender Kumar Sharma, Mr. J.P.S. Malik, Mr. K.S. Mohi, Ms. Sujata Kohli, Mr. Rakesh Tiwari, Mr.

> Chandra Gupta and Mr. Narottam Kaushal were not found fit for appointment to the post of Principal Judge, Family Courts on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011.
>
> The recommendations for appointment of Mr. Yashwant Kumar DHJS to the post of Principal Judge, Family Court, West, THC under next below rule be made to the Administrator, NCT of Delhi on receipt of notification of appointment of Mr. Brijesh Sethi, DHJS as District Judge under next below rule."
>
> (underlining supplied)

5.6.2. It further appears that in the subsequent resolutions dated 16.04.2015, 19.09.2015 and 28.11.2016, various recommendations were made by the Full Court for appointment to the post of District and Sessions Judge and Principal Judge, Family Court. In these resolutions, the cases of all the persons falling in the zone of consideration (including the appellant) were considered but, while making recommendations, some of the incumbents, including the appellant, were not found fit for such appointment on the basis of the criteria laid down in the aforesaid resolutions dated 28.04.2009, 15.01.2010 and 27.01.2011. For avoiding unnecessary repetition of similar aspects, all such resolutions need not be reproduced but, for ready reference, we may extract the relevant part of the last of such resolution dated 28.11.2016 as under: –

> "….Against the consequential vacancy on account of Mr. Girish Kathpalia being on deputation, the names of officers in the zone of consideration were considered and it was decided that on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011, the name of Mr. A.S.Jayachandra be recommended for

> appointment to the post of District Judge under next below rule with effect from the date he takes over.
>
> Mr. R.P.S. Teji, Mr.Mahavir Singhal and Ms. Sujata Kohli, DHJS were not found fit for appointment to the post of District Judge on the criteria of 'selection by merit' as laid down by the Full Court decision dated 28.4.2009 and modified by Full Court decisions dated 15.1.2010 and 27.1.2011."
>
> (underlining supplied)

THE FACTS RELATING TO THE APPELLANT AND HER GRIEVANCE

6. Having taken note of the relevant rules and the relevant resolutions, the basic facts relating to the appellant and the principal aspects of her grievance could now be recounted, in brief, as follows:

6.1. The appellant, having successfully competed in the written examination and interview, secured third position in her batch for direct selection to the cadre of DHJS and was duly appointed on 27.11.2002. Later on, her position in the batch became second with resignation of the candidate at second position. Thereafter, by virtue of the notification dated 19.12.2005, the appellant was appointed as Additional District and Sessions Judge (Permanent) w.e.f. 25.11.2004. It is not in dispute that the service conditions of the appellant are governed by the said Rules of 1970.

6.2. It is also not in dispute that for the period between May 2011 to January 2014, the appellant was assigned cases under the Hindu Marriage Act and other relatable matrimonial matters, during which period, she disposed of approximately 2589 cases, which included 478 amicable settlements.

6.3. The ACR gradings of the appellant for the relevant years had been that she was awarded 'B+' (good) in the years 2010, 2011, 2012 and 2013; and she was awarded 'A' (very good) in the year 2014.

6.4. It has been the case of the appellant that she became aware of the impugned resolutions only when the judicial officers appointed in the year 2002 were considered for promotion to the post of District and Sessions Judge/Principal Judge, Family Court in the month of November 2014. The appellant would submit that immediately after noticing the prejudicial requirements of the impugned resolutions, she addressed a representation dated 12.11.2014 to the Chief Justice and the companion judges of the High Court of Delhi for reconsideration of the criteria laid down in the impugned resolutions. It is the contention of the appellant, that no reply was offered on her representation but, on 02.12.2014, she was granted Super Time Scale by the High Court by way of notification No. 27/DHC/Gaz/ST/VI.D.10/2014.

6.5. On 13.01.2015, the appellant made another representation to the Chief Justice of the High Court of Delhi apprising about her pending representation and prayed that the proposed appointments may be kept on hold.

6.6. The grievance of the appellant had been that despite her representations, several appointments were made to the post of Principal Judge, Family Court from the candidates of her batch who were junior in rank to herself as also from the candidates of later batches. Aggrieved that her representations were not considered to review the criteria in question as

also by promotion of the incumbents junior to herself, appellant preferred the writ petition before the High Court while seeking the following reliefs:-

> "a) quashing the notifications No. F.6/15/2012-JudL/FC/Supt1aw/54-57 dated 15.1.2015 and No. F.6/2/2015JudL/Suptlaw/109-112 dated 22.1.2015.
>
> b) quashing the full Court resolutions dated 28.4.2009, 15.1.2010 and 27.1.2011 adopted by the Hon'ble High Court of Delhi, with respect to evolving the requirement of Grade A (if any), adopted on the said dates or at any other time for recommendation for appointment/ promotion to the post of District Judge! Principal Judge, Family Court.
>
> c) Quashing the Rule 27 of Delhi Hiher Judicial Service Rules, 1970 and direct the framing of specific Rules for the promotion/ appointment to the post of District and Sessions Judge/Principal Judge, Family Court.
>
> (ii) Direct the Respondent No. 1 to consider the petitioner for recommendation for the appointment/promotion to the Post of Principal Judge Family Court/ District and Sessions Judge as per her entitlement.
>
> (iii) pass such other orders or directions as deemed fit and proper in the facts and circumstances of the case."

SUBMISSIONS BEFORE THE HIGH COURT

7. Seeking the reliefs aforesaid, the appellant submitted before the High Court, *inter alia*, that prior to the year 2009, several candidates having only 'B+' or even 'B' grade were promoted as District and Sessions Judge and, when the batch of the year 2002 was being considered for appointment to the post of District Judge in the year 2014, she came to know of the requirements envisaged by the impugned resolutions. The appellant contended that failure in communication of the mandated conditions had jeopardised her promotional prospects.

7.1. It was also contended that the impugned resolutions were violative of Article 16 of the Constitution of India, for being opposed to the reasonable expectations for selection and vertical promotion, in terms of the service conditions. The appellant further submitted that application of the same criteria to judges as applicable to those in the Indian Administrative Service was against the very essence of the decision of this Court in ***All India Judges Association v. Union of India:*** **(1993) 4 SCC 288**, where it was held that there cannot be any parity between the judges and the administrative officers.

7.2. The appellant further referred to the decision of this Court in ***Dev Dutt v. Union of India:*** **(2008) 8 SCC 725** and submitted that granting better grading ('A') to a set of junior officers and giving lower grading ('B+') to senior, tantamount to adverse ACR for the senior and hence, the High Court establishment ought to have disclosed not merely the concerned officer's grading, but also those of her juniors, so that she could have taken recourse of fair and effective redress, by pointing out her strengths, which might well have been overlooked by the appraising authorities. The appellant also argued that though the ACR grades were made known to the judicial officers, yet the pointwise grades were not made known to them, which was required to be provided so as to assist the concerned officer to grow and also to appeal against, if the same were found to be arbitrary.

8. While opposing the submissions of the appellant, the respondent High Court establishment submitted, *inter alia*, that after the impugned

resolutions dated 28.04.2009 and 15.01.2010, the establishment received various representations which were considered in the meeting held on 06.07.2010 and, pursuant to the resolution adopted therein, a Committee was constituted to deal with the issue concerning the criteria for appointment to the post of District Judge. The respondent submitted that in its report dated 08.10.2010, the Committee recommended for maintaining the criteria of possessing "very good" grading in five years immediately preceding the year of appointment but suggested that the same be implemented in a phased manner; and while accepting such recommendations, the resolution dated 27.01.2011 came to adopted by the Full Court (as noticed hereinbefore). It was submitted that the High Court, being the best judge to assess as to which judicial officer was suited to the work, was entitled to fix the criteria for the appointment in question; and it was denied that such criteria had adversely affected the progression of Additional District Judges.

8.1. It was also contended by the respondent that the appellant had failed to show any flaw or unreasonableness in the criteria as laid down; that there was no requirement for publication of the promotional criteria, as it did not require obtaining of any additional qualification or likewise; that every employee was expected to work to the best of his ability and professional competence; and that raising a complaint against the promotional criteria was meaningless and unwarranted. The respondent also pointed out that for awarding ACR gradings, three judges of the High

Court were assigned the task of supervising the functioning of the judicial officers and verification of the information drawn up *qua* them; and the respective grades were made known only to the individual concerned.

8.2. The respondent establishment also defended Rule 27 of the Rules of 1970 with the submissions that guidelines and criteria need to be evolved having regard to the changing times; and as all the matters and contingencies cannot be prescribed in the rules, discretion of the competent authority is reserved but without vesting any arbitrary power.

8.3. It was also pointed out on behalf of the respondent establishment that the appellant was granted super time scale w.e.f. 01.07.2013; she made the representation on 12.11.2014 for reconsideration of the criteria in question; her representation was rejected by the Full Court on 29.04.2015; and the decision was communicated to her on 13.05.2015.

DECISION OF THE HIGH COURT: THE IMPUGNED ORDER

9. In its impugned judgment and order dated 21.08.2018, the High Court referred to the decisions of this Court in ***Chandramouleshwar Prasad v. Patna High Court*: AIR 1970 SC 370** and ***State of Bihar v. Bal Mukund Sah:* 2000 (4) SCC 640,** wherein Articles 233 and 235 of the Constitution of India were referred and primacy of the views of the High Court in the appointment of District Judges was highlighted. The High Court also analysed the aforementioned Full Court resolutions and proceeded to examine the grievance of the appellant with respect to her lack of knowledge or not being aware of the criteria to be fulfilled.

9.1. The High Court did not find any merit in the argument of the petitioner-appellant that she was aggrieved due to non-communication of the revised criteria while observing that before 2008-2009, there were no criteria fixed for the purpose, which meant that the High Court establishment had the discretion in the matter of selection and appointment of the District Judges, either in terms of seniority or merit. The High Court observed that such "no norms" position was sought to be rectified by structuring the discretion with emphasis on certain threshold gradings and such administrative criteria cannot be termed as arbitrary. The observations of the High Court, forming the core of its decision, could be usefully reproduced as under: –

> "22. The petitioner's grievance with respect to her lack of knowledge or not being aware of the criteria to be fulfilled by incumbent DHJS officers, in the opinion of this court, is not justified. Before 2008-09 there was no criteria, which meant that the High Court more or less had the absolute discretion to select and appoint anyone, on the basis of seniority, or merit. This "no norm" period was sought to be rectified by structuring the discretion, and insisting that the concerned officers ought to score certain threshold gradings in their ACRs to be eligible for consideration. Such administrative criteria, per se cannot be characterized as arbitrary, given the prevailing "no norm" or "no rule" period. Though not a matter of record, it is a fact that around that time, the existing one District court's territorial jurisdiction for the whole of Delhi was re-organized; nine District Courts were created, with resultant distribution of jurisdiction. That has now been further re-organized. The consequent need to fill nine posts was felt. The committee, which reported to the Full Court on 14.12.2009, took into account the identity of pay scales of District Judges and equivalent grade All India Service (IAS) officers and felt that since the former had to cross a threshold bar of five "Very good" ACR gradings for five years, preceding the date of consideration (for higher positions), a similar approach could be adopted. As was highlighted by

Chandramouleshwar Prasad "the High Court is the body which is intimately familiar with the efficiency and quality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits." Likewise, Bal Mukund Shah (supra) emphasized the same theme:

> *"..rules made by the Governor in consultation with the High Court in case of recruitment at grass-root level and the recommendation of the High Court for appointments at the apex level of the District Judiciary under Article 233 remain the sole repository of power to effect such recruitments and appointments. It is easy to visualise that if suitable and competent candidates are not recruited at both these levels, the out turn of the judicial product would not be of that high level which is expected of judicial officers so as to meet the expectations of suffering humanity representing class of litigants who come for redressal of their legal grievances at the hands of competent, impartial and objective Judiciary."*

23. Having regard to these imperatives, the petitioner's grievance that no norm should have been evolved and implemented without prior notice, is insubstantial. A judicial officer – like any other public employee or official joins the service, hoping to make a difference, in terms of dealing with the workload, quality of output (i.e. the judgments delivered) and also the cases assigned to her. In a sense, service in the judicial department (though a public service) is a mission, given the solemn nature of judging. If this is the assumption on which every judge, at every level is appointed to the judicial system, the argument that if one is made aware that a higher threshold of performance is expected, she or he would work better (or have worked better) cannot be countenanced. All judges – District Judges being no exception – are expected to perform at their optimum levels, given the exploding dockets, which they have to handle. The primary role of anyone, when appointed as a judge is to perform as a judge, to the best of her ability and competence. An incumbent cannot be heard to say that her judicial work was not up to the mark, because she was involved in some other duties or more importantly, she was not aware that best performance would result in selection as District Judge. Every functionary- including judges shoulder those extra duties to varying degrees, at different points of time. Nor do those duties define the role of any incumbent in a judicial

> service or system. If seen from this perspective, the work performed by every judicial officer is what is graded in the ACR. Therefore, to say that had any incumbent known that the highest or a better grading is essential she or he would have performed better is no grievance. The performance of every judge is expected to be her or his best, or what she or he was capable of, for the relevant period. Therefore, the nuancing of discretion (to appoint) from an absolute one, to one based on performance and merit, of DHJS officers, is neither arbitrary nor unreasonable. One more reason to reject the petitioner's argument in this regard is that the review which took place through the Full Court resolution of 27 January 2011, was due to representation of DHJS officers that introduction of the five ACR norm was abrupt. Therefore, there was a general awareness of this criteria, (put in place through the earlier resolution of 15-01-2010) which led to some disquiet and representation. The criteria which now stands challenged was therefore evolved as a measure to relax the rigors of their immediate application. It has been applied in the case of many instances of appointment; some of those appointees have since even retired; some were appointed as judges of this court. Even from that position, some appointees have retired. Therefore, it is too late in the day to say that the criteria should be set aside on the narrow ground that it was not made known. As members of a judicial cadre, all officers were aware of its existence. This ground therefore, is rejected."

9.2. The grievance of the appellant about absence of any information of the gradings of juniors was also found baseless. The High Court referred to the law declared by this Court as regards the necessity of communication of every ACR grading, particularly that in the case of ***Dev Dutt*** (supra) and observed as under:-

> "The petitioner's grievance however, is that the better or higher gradings given to her colleagues, particularly those junior to her were not known and that she could not articulate her objections to better her gradings, at the relevant time. This court is of the opinion that the method of appraisal of judicial officers is such that gradings given to each individual are treated as confidential. In such a system, it would not be permissible to publicize the gradings of all judicial officers, so

> that each one has information or knowledge of not only what she is graded, but also what others are graded. This grievance is therefore held to be without substance."

9.3. In the manner aforesaid, the High Court proceeded to reject the contentions of the appellant. However, before concluding, the High Court observed that though the existing system of grading of the judicial officers by the committees comprising of three High Court judges was merited but there being no uniform set of rules or guidelines for the appraisal committees to follow, it was in the fitness of things that to inject greater uniformity and objectivity as also some measure of transparency and predictability, certain norms and performance indicators be kept in view by the evaluation authorities. The High Court proceeded to broadly lay down such norms and indicators in the penultimate paragraph of its order and, ultimately, concluded on the writ petition in the following: –

> "29. In view of the above discussion, the court holds that the Full Court resolutions of 28.4.2009 (modified on 15.01. 2010) and the later resolution 27.01.2011, inasmuch as they prescribe that for appointment to the post of District Judge, the concerned judicial officer should have been graded A in the preceding five years, is not arbitrary; the challenge to Rule 27 too has to fail. The petitioner‟s grievance that she was arbitrarily denied knowledge of the ACR gradings of other officers, is also without merit. This court hereby requires that the directions in the preceding para of this judgment with respect to formulation of criteria for uniform grading of judicial officers, be suitably incorporated in the form of guidelines, for future implementation; the Registrar General shall take appropriate action to place the papers before the Hon‟ble Chief Justice, in this regard. The writ petition is disposed of in the above terms without order on costs."

RIVAL CONTENTIONS

10. The substance of the principal submissions made on behalf of the appellant in challenge to the order so passed by the High Court has been as follows:

10.1. The learned senior counsel for the appellant has argued that right to be considered for promotion is a fundamental right and the exercise of this fundamental right requires that an employee is given a free, fair and reasonable opportunity to be considered for such promotion. The main plank of the submissions of learned counsel for the appellant has been that only in the year 2009, the respondent establishment provided for the criteria on which a candidate was to be considered for promotion as a District and Sessions Judge/Principal Judge, Family Court but retrospective application of such criteria on the individuals like the appellant negates their fundamental right to be duly considered for promotion.

10.2. The learned senior counsel has emphatically argued that the said change in criteria was never communicated to the appellant nor was notified so as to make the candidate likely to be affected by such change aware about the requirements. According to the learned counsel, the so-called “general awareness” and “deemed knowledge” does not establish that all concerned were aware of the newly incorporated criteria and the lack of communication is in violation of principle of natural justice.

10.3. The learned senior counsel would submit that when the changes are made retrospectively and the right to promotion is denied, the procedure cannot be said to be just and fair. The learned counsel has argued that any

change in the method of promotion ought to be prospective in its application and ought to be specifically communicated to the candidate concerned. While relying on the decisions in ***State of U.P. v. Mahesh Narain :*** **(2013) 4 SCC 169** and ***Nirmal Chandra Bhattachargee & Ors. v. Union of India & Ors.:*** **1991 Supp (2) SCC 363**, the learned counsel has contended that in the similar fact situation, this Court has held that the change of service rules cannot be made to the prejudice of an employee who was in service prior to such change. According to the learned counsel, creation of new criteria for promotion amounts to a change in service rules and such an alteration cannot be given retrospective effect if it operates to the prejudice of the employee who was in service before such change and this cannot be done even in exercise of the so-called residuary powers.

10.4. The learned senior counsel would further submit that even when changes of reasonable nature can be made in the matter of promotion, the changes themselves should be made only in a reasonable manner with due notice to the people likely to be affected, which having not been done in the present case, the impugned operation of changed criteria cannot be countenanced. The learned counsel contended that when the petitioner joined the service and even thereafter the existing criteria for promotion to the post of District Judge as also for consideration to be elevated to the High Court had consistently been of the candidate having 'B+' grade and the appellant fulfilling such criteria, ought to have been promoted to the cadre of District Judge.

10.5. The learned senior counsel has further submitted that in the case of ***Dev Dutt*** (supra), this Court has specifically held that nomenclature is not important but the effect of an entry in the ACR would determine if it is an adverse one or not. The learned counsel would submit that in the present case, though the appellant was given her ACR gradings but she was unaware that after 2009, such gradings would be operating adverse against her pursuant to the new criteria and the effect of want of communication of change in service conditions and rules has operated detrimental to her candidature for promotion.

10.6. The learned senior counsel has further submitted that even as on date, no objective criteria exists for evaluating a judicial officer and marking of the grading is only on the subjective satisfaction of the authority concerned. The learned counsel would submit that while only the overall ACR gradings are communicated but the point-wise grading is not communicated, which hinders the ability of a judicial officer to appreciate any weak point or to effectively appeal against any unfair or adverse grading. With reference to the last part of the impugned order, learned counsel has contended that admittedly, no uniform system existed for evaluating a judicial officer and, in the given scenario, any grading based on unknown criteria could only be treated as arbitrary and the promotion criteria based thereon cannot be approved.

11. The counter-submissions on behalf of the contesting respondent could also be briefly taken note of as follows:

11.1. The learned counsel for respondent No. 1 has submitted that the posts of District and Sessions Judge and the Principal Judge, Family Court are selection posts to which, appointments are to be made on the basis of merit-cum-seniority and therefore, the appellant cannot claim appointment thereto as a matter of right. The learned counsel has referred to the facts that prior to the year 2008, there was only one sanctioned post of District Judge under the Delhi Higher Judicial Service Rules, 1970 but later on, the National Capital Territory of Delhi was bifurcated into 9 Civil Districts with effect from 01.11.2008; and that pursuant to such bifurcation, the strength of District and Sessions Judges was increased to 11. The learned counsel has referred to the aforementioned resolutions by the Full Court with the submissions that prior to the year 2009, there was no criteria laid down by the High Court for selecting candidates for appointment to the post of District Judge but, given the requirement of laying down standards for such selection, the said resolutions were adopted and implemented while keeping in view Rule 27 of the Rules of 1970 and the norms prescribed by the Government of India under OM dated 15.02.2008 for the posts having the pay scale equivalent to that of a District Judge.

11.2. With reference to Article 233(1) of the Constitution of India, the learned counsel would submit that the power to appoint District Judges lies strictly with the High Court and it was in exercise of such powers that the High Court laid down the criteria in question for selection of the most meritorious among the eligible candidates. While reiterating the

submissions that appointment to the posts in question is purely on merit-cum–security basis, the learned counsel has argued, with reference to several of the decisions, including those in ***Central Council for Research in Ayurveda & Siddha and Anr. v. Dr. K. Santhakumari:*** **(2001) 5 SCC 60** and ***Haryana State Electronics Development Corporation Limited and Ors. v. Seema Sharma and Ors.:*** **(2009) 7 SCC 311,** that in appointments on the basis of merit-cum-seniority, the merit acquires primacy and seniority becomes relevant only when all the aspects of merit qualifications are equal. The learned counsel has contended that the appellant was also duly considered for such appointment but only those candidates were appointed who were more meritorious than her, like the respondent Nos. 3 to 10.

11.3. As regards the question of knowledge of the appellant regarding the criteria in question, the learned counsel has argued that the criteria adopted by the High Court had been the same as prescribed by the Government of India in OM dated 18.02.2008 and, by virtue of Rule 27 of the Rules of 1970, the appellant shall be deemed to be having knowledge of the same; and even her contemporaneous colleagues had conducted themselves in accordance with the requirements of such criteria. The learned counsel has also referred to the representations made by the Associations of the officers and has contended that it cannot be suggested by the appellant that the concerned judicial officers were not having knowledge of adoption of the criteria mentioned in the impugned resolutions.

11.4. The learned counsel has distinguished the decision of this Court in the case of ***Mahesh Narain*** (supra) with the submissions that therein, this Court has held that an employee cannot be precluded from enjoying the benefit of a provision for promotion which was amended after he became eligible for being promoted. The learned counsel would submit that in the present case, the High Court did not change the eligibility criteria for appointment of District Judge and by the impugned resolutions, merely evolved a selection criteria for evaluation of eligible candidates; and in any case, the appellant entered the zone of consideration only in the year 2014-15 whereas, the said criteria in question had been implemented for appointments made from the year 2012 onwards. Similarly, the learned counsel has distinguished the decision in ***Nirmal Chandra*** (supra) with the submissions that the fact situation therein was entirely different where due to restructuring, Class D employees were placed in Class C without change of their status and they were sought to be denied the benefit of promotion to a post in Class C for which, this Court held that such promotion could not be denied to the persons who became eligible for promotion prior to the restructuring; and the impact of restructuring could not prejudice the employees.

11.5. As regards the decision in ***Dev Dutt*** (supra), the learned counsel has contended that the reliance thereupon was entirely misplaced because the appellant was admittedly informed of all her ACRs; and she rather accepted most of her ACRs for the period 2010 to 2014 without any protest

and did not pursue any case for upgradation of the same; and it is evident that she was never dissatisfied with her grading in the relevant ACRs as 'B+'.

11.6. Put in a nutshell, the submissions on behalf of the contesting respondent have been that the appellant is not entitled to any relief because all the candidates recommended for promotion had better ACR gradings than the appellant.

12. We have bestowed anxious consideration to the rival submissions and have perused the material placed on record with reference to the law applicable.

13. In view of the submissions made, two points mainly arise for determination in this case: (1) As to whether the appellant has been denied fair and reasonable consideration of her case for promotion to the posts of District and Sessions Judge/ Principal Judge, Family Court by operation of the criteria laid down in the impugned resolutions; and (2) As to whether the appellant suffered any prejudice in the matter of ACR gradings?

RE: POINT NUMBER (1)

14. As noticed, the principal grievance of the appellant is that she has been denied fair and reasonable consideration of her case for promotion. It has been contended on behalf of the appellant that the respondent High Court evolved new criteria for promotion to the posts of District and Sessions Judge and Principal Judge, Family Court by way of the impugned resolutions but the same was not notified and she was not made aware of

the new criteria that required 'A' gradings in the ACRs of five years preceding the base year of consideration. It has also been contended on behalf of the appellant that the respondent High Court had acted illegally and unfairly in putting the new criteria in operation with retrospective effect that has caused her serious prejudice. An ancillary aspect has also been put into contention that the High Court had not been right in fixing the criteria for promotion of the judicial officers on the basis of the norms applicable to the executive officers while disregarding the law that the members of other services cannot be placed at par with the members of the judiciary.

15. In order to examine as to whether the appellant has been able to make out a valid case of legal grievance, a brief reference to the basic legal provisions and principles having application to the case at hand shall be apposite.

15.1. It does not require any elaborate discussion to say that the right to be considered for promotion is a fundamental right of equality of opportunity in the matter of employment. The wide variety of case-law on the subject need not be recounted but, for ready reference, it appears appropriate to refer to the decision in ***Ajit Singh and Ors. (II) v. State of Punjab and Ors.:*** **(1999) 7 SCC 209** wherein a Constitution Bench of this Court reaffirmed the basics of such fundamental right and also pointed out the silhouettes of the criteria relating to promotional avenues in the following: –

> "22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands

that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that Sub-clause (1) of Article 16 is a facet of Article 14 and that -it takes its roots from Article 14. The said Sub-clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16(1). For example, if the promotion is by rule of seniority-cum-suitability', the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the senior most person at the

> basic level is to be considered first and then the others in the line of seniority). That is how right to be considered for promotion and the 'seniority' attached to such promotion become important facets of the fundamental right guaranteed in Article 16(1)."
>
> (underlining supplied)

15.2. The criteria in question, for promotion to the post of District and Sessions Judge and equivalent, had been evolved and operated by the High Court in the purported exercise of its powers under the Rules of 1970. The fundamentals of law also remain settled that the power of appointment, posting and promotion of District Judges vests with the Governor of the State, but this power has to be exercised in consultation with the High Court concerned; and this Court has laid down in no uncertain terms that in such matters, the primacy is to be given to the views of High Court. Again, instead multiplying the authorities, suffice would be to refer to the decision in the case of ***Chandramouleshwar Prasad*** (supra) wherein a Constitution Bench of this Court exposited the principles underlying Article 233 of the Constitution of India[7] and observed, *inter alia*, as under: –

> "….No doubt the appointment of a person to be a District Judge rests with the Governor but he cannot make the appointment on his own initiative and must do so in consultation with the High Court. The underlying idea of the Article is that the Governor should make up his mind after there has been a deliberation with the High Court. The High Court is the body which is intimately familiar with the

7 Article 233 (1) reads as under:-

> **"233. Appointment of district judges**.—(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

> efficiency and quality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits. This does not mean that the Governor must accept whatever advice is given by the High Court but the Article does require that the Governor should obtain from the High Court its views on the merits or demerits of persons among whom the choice of promotion is to be limited. If the High Court recommends A while the Governor is of opinion that B's claim is superior to A's it is incumbent on the Governor to consult the High Court with regard to its proposal to appoint B and not A. If the Governor is to appoint B without getting the views of the High Court about B's claim vis-a-vis A's Lo promotion, B's appointment cannot be said to be in compliance with Article 233 of the Constitution. …..
>
> …. So far as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the claims and merits of persons to be considered for promotion. The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court's views in regard thereto……"

15.3. While keeping the aforesaid principles in view, we may now examine the scheme of the Rules of 1970. As noticed, two channels of recruitment to the posts in the cadre of District Judge have been provided: one by promotion from amongst the Civil Judges (Senior Division) and another by direct recruitment from the eligible persons. As regards promotion, the bifurcation is provided in the manner that 65% are to be recruited by way of promotion on the basis of merit–cum–seniority and 10% by promotion strictly on the basis of merit through limited competitive examination (*vide* Rule 7 and 7A). Even in the matters relating to pay scales, it is noticed that granting of Selection Grade and Super Time Scale is on the assessment of merit–cum–seniority *(vide* Rule 18). The matter in issue in the present

appeal relates to promotion to the posts of District and Sessions Judge or Principal Judge, Family Court within the cadre of DHJS. Apparently, no separate provision is found in the Rules of 1970 as regards such upward progression within the cadre and obviously, for such a matter, the residuary provision as contained in Rule 27 comes into operation by virtue of which, the directions or orders for the time being in force and applicable to the officers of comparable status in IAS would apply.

15.3.1 At this juncture, we may observe that the appellant had attempted to question the said Rule 27 of the Rules of 1970 as being *ultra vires*, particularly with reference to the decision of this Court in the case of ***All India Judges Association*** (supra). In our view, the High Court has rightly rejected such a challenge to Rule 27 because this residuary clause in the Rules of 1970 does not appear offending the law declared by this Court in any manner. This residuary clause is not of equating the judicial officers with the executive officers but only provides that in regard to the matters for which no provision or insufficient provision has been made in the Rules of 1970, the relevant rules, directions or orders as applicable to IAS shall regulate the conditions of service of the officers of DHJS. A perusal of the other provisions in the Rules of 1970 makes it clear that reference to the service conditions of the members of IAS is not an anathema to these rules and, on the contrary, wherever necessary, the applicable rules, orders or directions concerning the members of IAS do govern the service conditions of the judicial officers too. For example, in the matter of pay fixation of a

promoted officer, it is provided in Rule 20 that such pay shall be fixed in the referred time scale in accordance with the financial rules, regulations et cetera, as applicable from time to time to the members of IAS; and as per Rule 26, the direct recruits are required to produce before appointment, a certificate of physical fitness in accordance with the standards prescribed for IAS. Such provisions, essentially meant for proper regulation of the service, by themselves, do not put the members of DHJS at par with the members of IAS for all purposes. Moreover, as noticed, what the High Court establishment has provided by way of the impugned resolutions are the norms for promotion while taking cue from the norms applicable to the members of IAS in the equivalent pay scale. Providing for such norms does not in any manner stand at conflict with the principles laid down in the case of ***All India Judges Association*** (supra). The challenge to the said Rule 27 has rightly been rejected by the High Court.

15.4. It would now be appropriate to take note of the principles governing the exercise of promotion, particularly the norms and criteria for promotion.

15.4.1. As noticed, in the case of ***Ajit Singh*** (supra), even while holding that the right to be considered for promotion is a fundamental right, the Constitution Bench pointed out the subtle distinction in the operation of the norms of seniority on one hand and any rule requiring consideration of merit on the other while observing, *inter alia*, that '*if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found*

meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted.'

15.4.2. In ***Central Council for Research*** (supra), this Court further elaborated on the relevant principles, particularly with reference to the role of merit in relation to the higher posts while observing, *inter alia*, as under:-

> **"6.** The principle of merit-cum-seniority is an approved method of selection and this Court in *Sant Ram Sharma* v. *State of Rajasthan: AIR 1967 SC 1910* held that promotion to "selection grade posts" is not automatic on the basis of ranking in the gradation list and the promotion is primarily based on merit and not on seniority alone. At p. 1914 of the judgment, it is stated as under: (AIR para 6)
>
> > "The circumstance that these posts are classed as 'selection grade posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the gradation list but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the gradation list does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."
>
> **7.** The Court further held that such mode of selection is not violative of Article 14 of the Constitution.
>
> **8.** In *State of Orissa* v. *Durga Charan Das: AIR 1966 SC 1547* the Constitution Bench of this Court held that the promotion to a selection post is not a matter of right which can be claimed merely by seniority.
>
> **9.** In *Union of India* v. *Mohan Lal Capoor: (1973)2 SCC 836*[3] (SCC at p. 856, para 37) it was held as under:

> "[F]or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or, if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."
>
> **10.** In *B.V. Sivaiah* v. *K. Addanki Babu: (1998) 6 SCC 720* this Court held that the principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal."

15.4.3. In ***Haryana State Electronics*** (supra), this Court again pointed out the root distinction in the principles of merit-cum-seniority and seniority-cum-merit in the following:-

> **"7.** The Court is of the opinion that the principle of merit-cum-seniority and that of seniority-cum-merit are two totally different principles.
>
> **8.** The principle of merit-cum-seniority puts greater emphasis on merit and ability and where promotion is governed by this principle seniority plays a less significant role. However, seniority is to be given weightage when merit and ability more or less are equal among the candidates who are to be promoted.
>
> **9.** On the other hand, insofar as the principle of seniority-cum-merit is concerned it gives greater importance to seniority and promotion to a senior person cannot be denied unless the person concerned is found totally unfit on merit to discharge the duties of the higher post. The totality of the service of the employee has to be considered for promotion on the basis of seniority-cum-merit…."

16. Keeping the principles aforesaid in view, when we revert to the scheme of the Rules of 1970, the striking feature is that even at the entry level, the promotions are to be made either on merit-cum-seniority basis[8] or

8 As per clause (a) of Rule 7(1) and Rule 7A of the Rules of 1970

on merit basis[9]. Further, grant of Selection Grade and Super Time Scale is also on assessment of merit–cum–seniority[10]. In the given scheme of the Rules of 1970, it is difficult to countenance any suggestion that in DHJS, merit could be forsaken at any level or only seniority be given primacy in the matter relating to upward progression to the higher posts of District and Sessions Judge or Principal Judge, Family Court. Rather, looking to the nature of posts, in every higher progression, merit would play a major role and would, perforce, acquire primacy.

17. We may also recapitulate a few basic features relating to the impugned resolutions. As per the facts available on record, prior to the year 2008, there was only one sanctioned post of District Judge under the Rules of 1970. Later on, the National Capital Territory of Delhi came to be bifurcated into 9 Civil Districts and the bifurcation came into effect from 01.11.2008 by virtue of the notification dated 22.10.2008; and in view of such bifurcation, the strength of District and Sessions Judges was increased to 11. This reorganisation and increase of strength of the cadre of DHJS, obviously, led to the requirement of providing the norms and criteria for promotion to the posts of District and Sessions Judges and equivalent because no such norms and criteria were in existence. In keeping with such requirements, the High Court, in its Full Court meeting dated 28.04.2009, adopted a resolution to the effect that, for the purpose of being selected/promoted as District and Sessions Judge, a candidate of

9 As per clause (b) of Rule 7(1) of the Rules of 1970
10 As per Rule 18 of the Rules of 1970

DHJS ought to fulfil the criteria of possessing at least two 'A' (very good) and three 'B+' (good) ACR gradings for the preceding five years from the date of consideration for such appointment. Thereafter, in its Full Court meeting dated 15.01.2010, the High Court proceeded to modify the aforesaid criteria to the effect that for being promoted as District and Sessions Judge, a candidate of DHJS ought to possess the minimum 'A' (very good) grading in ACRs of each of the five years under consideration. It had been the case of the respondent High Court that such criteria were adopted as being equivalent to the revised promotion criteria in the Indian Administrative Services by virtue of the residuary provision contained in Rule 27 *ibid.* As against the aforesaid resolution dated 15.01.2010, the High Court received certain representations, including those from the Associations of the Officers and, upon consideration of these representations, a committee comprising of four Hon'ble Judges, in its report dated 08.10.2010, recommended for implementation of the revised criteria in a phased manner; and such recommendations of the committee were accepted by the Full Court of the High Court on 27.01.2011. In this manner aforesaid, the respondent High Court took the decision to implement the revised criteria envisaged by the resolution dated 15.01.2010 in a phased manner; and the requirements came to be provided that for appointment to the post of District and Sessions Judge, a candidate should, in the five years preceding the base year, carry the ACR gradings as follows:

(i) for the year 2009, at least two 'A' (very good) and the remaining three 'B+' (good);

(ii) for the year 2010, at least three 'A' (very good) and the remaining two 'B+' (good);

(iii) for the year 2011, at least four 'A' (very good) and the remaining one 'B+' (good); and

(iv) for the year 2012 and onwards, a minimum of five 'A' (very good).

Further, the Administrative and General Supervision Committee of the High Court, in its meeting dated 13.09.2013, resolved, *inter alia*, that the post of Principal Judge, Family Court being equivalent to that of District and Sessions Judge, the same criteria be also adopted for appointment of Principal Judge, Family Court.

17.1. In an overall comprehension of the matter, we have no hesitation in endorsing the views of the High Court in the impugned order that the no-norms position for upward progression in DHJS, as existing prior to the year 2009, could not have been continued with reorganisation of the District Courts and certain norms, commensurate with the posts in question, were required to be provided; and were accordingly provided with reference to the prescriptions for the officers of IAS in the equivalent pay scales. It has been asserted on behalf of the contesting respondent, and remains indisputable, that for the officers of such equivalent pay scales, the requirement had been of five "very good" ACR gradings (i.e., 'A' grading) for five years preceding the date of consideration for higher positions. The High

Court establishment had further been reasonable and balanced in its approach when such threshold requirement of five "very good" ACR gradings was not foisted on the officers immediately and, in keeping with the position obtainable in the past as also keeping in view the merit requirements, took a considered decision after examining the representations that such criteria be implemented gradually and started with the norms of two "very good" with three "good" ACR gradings for the year 2009 and systematically enhanced the norms to three "very good" with two "good" ACR gradings for the year 2010; four "very good" with one "good" ACR gradings for the year 2011; and eventually provided for five "very good" ACR gradings for the year 2012 and onwards.

17.2. In the given fact situation and the methodology of gradual implementation adopted by the High Court, the suggestion on the part of the appellant that there had been any so-called retrospective operation of revised criteria remains totally bereft of substance and could only be rejected.

18. Turning now to the main plank of the submissions on behalf of the appellant that she was not made aware of such so-called revised criteria, in our view, such submissions carry several shortcomings of their own. As noticed, the appellant joined DHJS in the year 2002 and eventually stood second in rank in her batch. She was confirmed with effect from 25.11.2004. She was, and would always be presumed to be, aware of all the requirements of the Rules of 1970. Moreover, the appellant, a member of

DHJS, cannot suggest that she remained oblivious of the developments about creation of 9 Civil Districts in the year 2008 and increase in the strength of District and Sessions Judges to 11. The appellant was also aware of the fact that no specific provision was available in the Rules of 1970 as regards upward progression in DHJS, particularly to the posts of District and Sessions Judge and Principal Judge, Family Court and hence, by virtue of Rule 27 of the Rules of 1970, she would be deemed to be having constructive knowledge that the criteria to be adopted for such upward progression would be that as applicable for the equivalent posts in IAS. The Office Memorandum dated 18.02.2008 issued by the Government of India in its Ministry of Personnel, Public grievances and Pensions (Department of Personnel and Training) has been placed on record by the contesting respondent and it is not the case of the appellant that she was not aware of this Office Memorandum issued by the Government of India[11]. When it had consistently been provided that for promotion to the scale of Rs. 18,400 – 22,400 and above, the prescribed benchmark of "very good" ought to be met in all ACRs of five years under consideration; and when the higher posts of District and Sessions Judge and Principal Judge, Family Court do carry much higher scales of pay (*vide* Rule 18 *ibid.*), neither the

11 In the said OM, it had, inter alia, been provided that, –

> "…in order to ensure greater selectivity at higher level of administration, the DPC may ensure that for the promotion to the scale of Rs.18,400–22,400 and above, the prescribed benchmark of 'Very Good' is invariably met in all ACR's of five years under consideration…"

High Court could be faulted in applying the same benchmark for such higher posts in DHJS nor the appellant could feign ignorance about the same.

18.1. Apart from the above, it is noteworthy that in the Rules of 1970, even the entry level promotion to the post in DHJS is on the basis of merit-cum-seniority or merit. Viewed in the light of such requirements, it goes without saying that any upward progression in DHJS could only be on the higher requirements of merit and in any case, such requirements cannot be lesser than the requirements at entry level. In this view of the matter too, the appellant was conscious of the fact that for upward movement in DHJS, merit would acquire primacy; and that seniority alone was not going to be decisive for promotion to the higher posts of District and Sessions Judge and the Principal Judge, Family Court. Although there is no requirement in law that criteria for promotion based on ACR alone be also notified but, in any case, in the scheme of the rules and the requirements of the posts in question, the appellant cannot contend that she was not aware of the position that comparative merit of the incumbents shall be a crucial factor for any upward progression in the cadre.

18.2. It is also noteworthy that when from the year 2009, such exercise was undertaken by the High Court establishment to lay down proper norms and criteria for upward progression in DHJS, both the Associations of the judicial officers namely, Delhi Higher Judicial Service Officers Association as also Delhi Judicial Service Officers Association, made representations after the Full Court meeting dated 15.01.2010 and gradual implementation of the

criteria was provided after due consideration of the said representations. It is not the case of the appellant that she is not a member of the Association of DHJS officers.

18.3. Viewed from any angle, it is but apparent that the appellant was aware of, and shall always be deemed to be conscious of, the requirement that any promotion to the post of District and Sessions Judge or Principal Judge, Family Court would only be on the basis of such norms where merit would be a crucial factor and seniority alone would not suffice. It follows as a necessary corollary that the appellant was also conscious of the position that while making any such promotion, the assessment would be based on the competitive merit of the candidates in the zone of consideration; and if any candidate in such zone of consideration was possessed of better merit than herself, he would be preferred for promotion.

19. Coming now to the operation of the criteria in question, we are clearly of the view that providing for the norms for assessment of the comparative merits of the candidates in the zone of consideration, was squarely within the domain of the High Court; and infringement of the right of consideration could only be suggested if different yardsticks or different norms were provided and applied *qua* the similarly circumstanced persons. However, this is not the case of the appellant nor it could be so because the High Court has apparently taken up all the persons in the zone of consideration at the relevant time and has accorded promotion on the basis of comparative merit of the candidates. The appellant, when could not stand

in such competitive merit position, cannot raise a complaint about infringement of any of her legal rights. It is not the case of the appellant that anybody junior to her and standing equal in merit or anybody not fulfilling the criteria laid down by the High Court has been promoted.

19.1. Though, in all fairness, the appellant has not attempted to question the reasonableness of the criteria as provided by the High Court but, having regard to the issues raised, we feel inclined to observe that looking to the duties and responsibilities attached with the higher posts of District and Sessions Judge and Principal Judge, Family Court, the High Court cannot be faulted in providing for a reasonable method of assessment of the requisite merit in the manner that a candidate in the zone of consideration ought to be possessing minimum five “very good” ACRs in the preceding five years from the base year. As already noticed, in fact, the criteria so adopted had been the identical one as provided for the members of IAS in the equivalent pay scales.

20. Therefore, the contentions urged on behalf of the appellant about non-communication of the criteria for promotion turn out to be totally meritless and the grievance as suggested on behalf of the appellant cannot be considered to be a legal grievance.

21. From the material placed on record, it is also apparent that the case of the appellant was duly considered for such promotion along with the other incumbents but herself and a few others were not promoted for not fulfilling the criteria as provided in the impugned resolutions. The fact that the case

of the appellant was also duly considered is amply borne out from the minutes of the Full Court meetings, including those of the meeting dated 09.01.2015 , 16.04.2015, 19.09.2015 and 28.11.2016 (the relevant parts of two such resolutions dated 09.01.2015 and 28.11.2016 have been extracted in paragraphs 5.6.1 and 5.6.2 hereinabove). Therefore, the appellant cannot raise a grievance that the respondent establishment has not accorded due consideration to her case for promotion. As noticed, case of the appellant was duly considered but she could not be promoted for not possessing the requisite gradings in her ACRs of the relevant period.

22. Having regard to the facts and circumstances of the present case, the decisions in the cases of ***Mahesh Narain*** *and* ***Nirmal Chandra Bhattacharjeee*** (supra) are of no avail to the appellant because the fact situation of the said cases were entirely different and this Court held that an employee cannot be denied the benefit of a provision for promotion which was amended after he became eligible for being promoted. In the present case, the High Court did not change the eligibility criteria for appointment to the post of District and Session Judge or Principal Judge, Family Court but merely evolved a selection criteria for evaluation of eligible candidates. There had not been any denial of a pre-existing right of the appellant, who entered the zone of consideration only in the year 2014-15 whereas, the criteria in question was implemented for the appointments made from the year 2012.

23. For what has been discussed hereinabove, we are clearly of the view that the appellant has not been denied fair and reasonable consideration of her case for promotion to the posts of District and Sessions Judge/ Principal Judge, Family Court by operation of the criteria laid down in the impugned resolutions. Point number (1) is, accordingly, answered against the appellant.

RE: POINT NUMBER (2)

24. It has been argued on behalf of the appellant that though the questioned criteria came to be provided by way of the impugned resolutions and the same were sought to be implemented in a phased manner, but there existed no objective basis for evaluating a candidate before assigning any particular grading in ACR; and this fact is highlighted in the impugned order itself where the Court has recognised the fact that there was no uniform set of rules and guidelines for the appraisal committees to follow and proceeded to lay down certain norms and guidelines in that regard. Therefore, and while seeking strength from such observations in the impugned order, it has been contended that deep lacuna in the system left a wide vacuum in implementation of the new benchmark provided by the impugned resolutions without any means of representation for the eligible candidates like the appellant, who were otherwise suitable and eligible for being considered for promotion. The decision of this Court in the case of ***Dev Dutt*** (supra) has also been referred on behalf of the appellant. As noticed, it had also been the submission on behalf of the appellant that she

was prejudiced for not being provided with the point-wise gradation and also for having not been provided with the gradings of the other officers who were junior to herself and who were given the promotion. In our view, the submissions remain totally meritless and it cannot be said that the contesting respondent has caused any prejudice to the appellant in the matter of ACR gradings.

25. The fundamental requirement in law for communication of every entry in ACR to the employee concerned, as settled in the case of ***Dev Dutt*** (supra) and reaffirmed in the case of ***Sukhdev Singh v. Union of India:*** **(2013) 9 SCC 566,** is neither of any doubt nor of any dispute. The law declared in the case of ***Dev Dutt*** (supra), as referred on behalf of the appellant, could be usefully noticed as under: –

> **"9.** In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have "very good" entry for the last five years. Thus in this situation the "good" entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the *effect* which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a "good" entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.
>
> *** *** ***
>
> **17.** In our opinion, *every entry in the ACR* of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (*1*) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which

> would enable him to improve his work in future; (*2*) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi* v. *Union of India: (1978) 1 SCC 248* that arbitrariness violates Article 14 of the Constitution.
>
> **18.** Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.
>
> *** *** ***
>
> **41.** In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

25.1. In our view, reference to the aforesaid principles remains totally misplaced in the fact situation of the present case. It is not in dispute that the appellant was, in fact, informed of every grading made in her ACR. She was awarded 'B+' (good) in the years 2010, 2011, 2012 and 2013; and 'A' (very good) in the year 2014. From the material placed on record, it appears that the appellant never challenged her gradings for any year except that for the year 2011 when she requested for upgradation of her ACR grading from 'B' to 'B+' or 'A'; and the High Court, acceding to her request, upgraded her ACR to 'B+'. As noticed, the impugned resolution dated 27.01.2011 came to be adopted after due consideration of the representations made to the High Court and in conformity with the criteria provided by the Government of

India for the posts equivalent in scale to that of District Judges. However, the criteria of having 'A' (very good) grading in the preceding five years was implemented in a phased manner, as already noticed hereinbefore. The appellant, not being oblivious of the position that for any upward progression in DHJS, comparative merit would be a key factor, chose to remain contented with her grading at 'B+' in the relevant years and did not question the same at the appropriate time and in appropriate manner. That being the position, the appellant cannot be acceded the right to contend now and at this stage that the ACR gradings have operated adverse to her. The requirements of the decision in ***Dev Dutt*** (supra) were duly met with communication of ACR gradings to the appellant.

26. Having regard to the circumstances of this case, we are impelled to observe that while raising grievance with regard to the impact and effect of ACR gradings, the appellant appears to have missed out the fundamental factor that for the promotions in question, an individual's minimum merit, by itself, was not going to be decisive; but the relevant factor was going to be comparative merit of the persons in the zone of consideration. That being the position, when the persons in zone of consideration possessing 'A' (very good) grading have been promoted in preference to her, the appellant cannot raise a grievance about her gradings after such promotions.

27. The other contention as on behalf of the appellant that only the overall ACR grading was communicated but not the point-wise grading or criteria for grading, again, does not advance the cause of the appellant in

any manner. As noticed, the appellant did not challenge her 'B+' gradings in the years 2010, 2012 and 2013. She was awarded 'B' grading in the year 2011 and upon her representation, the same was upgraded to 'B+'. When the appellant had not otherwise challenged her 'B+' gradings for the years under consideration, she would not be entitled to raise any question on the process or criteria for such award of gradings. Even otherwise, the appellant has failed to show any legal requirement on the respondent establishment to supply to her anything other than the overall grading. Another feeble suggestion on behalf of the appellant, as noticed in the impugned order by the High Court, about want of knowledge of gradings of other officers has rightly not been pressed before us. The grading of an individual officer remains a matter between the officer and the establishment and any other officer cannot claim to be informed about the grading of any other officer as a matter of right.

28. On behalf of the appellant, however, a substantial emphasis has been put on the observation made in the impugned order on the requirement of uniform norms for awarding of the grades in ACR; and it has been contended that no objective criteria existed for evaluating an officer. These submissions are also sans merit and do not in any manner advance the cause of the appellant in the present case. This is for the simple reason that the system and method for awarding of the grades in ACR at the relevant time was equally applicable to all the judicial officers; and the gradings, not only of the appellant but of all other officers too, were made by

way of the same methodology. Therein too, as noticed, the judicial officers' work and performance was supervised and graded by the committees comprising of three Hon'ble Judges and ultimately, the gradings were finalised by the Full Court. In the impugned order also, the High Court found such system to be a merited one but indicated the want of uniform set of rules or guidelines for all the appraisal committees to follow; and thereafter proceeded to lay down certain norms to be kept in view by the evaluation authorities. The observations by the High Court, essentially meant for improvement of the system with uniform set of guidelines, do not nullify the effect of the ACRs already marked by the existing system. The guidelines indicated by the High Court in the order impugned could only be construed as being meant for future implementation. Nothing turns upon such observations in relation to the case of the appellant.

29. For what has been discussed hereinabove, we are clearly of the view that the appellant has not been able to establish that she had suffered any prejudice in the matter of ACR gradings. Point number (2) is also, accordingly, answered against the appellant.

30. The discussion and findings aforesaid are sufficient to dispose of this appeal but before concluding, we deem it necessary to point out that at the conclusion of the hearing of this matter, the appellant, who was present in the Court to assist the arguing counsel, made the submissions before us, with permission, that she had been a hard working officer and had never received any adverse comment in her career but denial of promotion has

caused her serious prejudice. In regard to such lamentation, we deem it appropriate to observe that while the appellant, standing second in rank in her batch and having never earned any adverse comment, cannot be faulted in making such expressions but at the same time, it is expected of her to appreciate that when any particular progression depends on comparative merit, and only the persons standing higher in merit have been accorded such progression, her grievance cannot partake the character of a legal grievance that could lead to any relief in law. We may put it differently also to say that not being found eligible for promotion with reference to the criteria as provided is not, by itself, any adverse pronouncement against the diligence and commitment of the appellant. Nothing further could be or need be said in this matter.

CONCLUSION

31. In the result, this appeal fails and is therefore dismissed with no order as to costs and with the observations foregoing.

……..……J.
(A.M.KHANWILKAR)

……..……J.
(DINESH MAHESHWARI)

New Delhi,
Dated: 24th April, 2020.