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AG: Let 7-judge bench decide SC/ST creamy layer exclusion

SC To Hear Arguments On Reference To Larger Bench in '20

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New Delhi: Having failed to convince two five-judge benches to rule against exclusion of creamy layer from reservation for Scheduled Castes and Scheduled Tribes in government job promotions, the Centre on Monday made a fresh attempt by requesting the Supreme Court to refer the "emotive issue" to a seven-judge bench.

Attorney general K K Venugopal told a bench of CJIS A Bobde and Justices B R Gavai and Surya Kant that "this is an emotive issue" and the Centre wanted a five-judge bench's September 28, 2018, judgment in Jarnail Singh case to be reconsidered by a seven-judge



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bench. The SC agreed to hear the AG and other petitioners, who were opposing such reference, in the new year.

Appearing for petitioners, senior advocate Gopal Shankaranarayanan told the bench that the Jarnail Singh judgment had considered the SC's 2005 five-judge bench ruling in Nagaraj case applying creamy layer exclusion for SC/ST quota in promotion and had categorically rejected the Centre's

plea to refer the issue to a seven-judge bench.

Writing the judgment for the five-judge bench in Jarnail Singh case, Justice R F Nariman had said, "We conclude that the judgment in Nagaraj case does not need to be referred to a seven-judge bench. However, the conclusion in Nagaraj case that the state has to collect quantifiable data showing backwardness of Scheduled Castes and Sche-

duled Tribes, being contrary to the nine-judge bench in Indra Sawhney case, is held to be invalid to this extent."

Taking into account an important factor, the SC in Jarnail Singh case had said, "According to us, Nagaraj has widely left the rest for determining adequacy of representation in promotional posts to the states for the simple reason that as the post gets higher, it may be necessary even if a proportionality test to the population as a whole is taken into account, to reduce the number of Scheduled Castes and Scheduled Tribes in promotional posts, as one goes upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made."