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JAGDISH CH. PATNAIK AND ORS.

v.

STATE OF ORISSA AND ORS.

APRIL 7, 1998

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[G.B. PATTANAİK AND M. SRINIVASAN, JJ.]

*Service Law :*

*Orissa Service of Engineers Rules, 1941: Rule 26.*

C

*Seniority-Inter se—Direct recruits vis-a-vis promotees—Determination of—Officers—“Recruited by promotion and by direct recruitment in the same year”—Held: The word “recruited” means “appointed” and the “year” means calendar year—A Direct recruit is recruited when appointment letter is issued and not when process of recruitment is started—Hence, direct recruits recruited during the calendar year would be junior to the promotee recruits recruited during the said calendar year—Further, while determining seniority, reference to quota for direct recruitment and the vacancies under that quota, not necessary.*

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*Administrative Tribunals Act, 1985: Sections 19 and 12.*

E

*Review application—Filed by third party—Maintainability of—Third party also filed original application—Tribunal allowed review application but dismissed original application as not maintainable—SLP filed against dismissal of original application—Appeal against review order also filed—Held : since the entire matter is before Supreme Court the issue regarding maintainability of review application need not be decided.*

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*Interpretation of Statutes:*

*Interpretation—Rules of—Plain or ordinary meaning—Preference of—Held : When language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary and irrational nor contrary to the object of the statute, then it is the duty of court to give effect to the words used in the statute because the words declare the intention of the law making authority the best.*

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*Words and Phrases :*

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*“Recruited” and “Year”—Meaning of—In the context of R. 26 of the*

*Orissa Service of Engineers Rules, 1941.*

The appellants were directly recruited as Assistant Engineers by the State Public Service Commission in accordance with Orissa Service of Engineers Rules, 1941 against vacancies for the year 1978 and were actually appointed in the year 1980. The respondents were the promotees to the post of Assistant Engineers.

The appellants filed an original application before the State Administrative Tribunal claiming that since the appellants were recruited against vacancies for the year 1978 their seniority *vis-a-vis* the respondents should be determined on that basis notwithstanding the fact that the appellants were actually appointed in the year 1980. The respondents had not been arrayed as parties to the said proceedings. The Tribunal allowed the application.

Being aggrieved the respondents filed a review application before the Tribunal for reviewing the aforesaid order. The respondents also filed an original application before the Tribunal. The Tribunal dismissed the original application as not maintainable. However, the Tribunal allowed the review application and held that the appellants could not be treated as recruits of the year 1973 but must be treated as recruits of the year 1980 when they were actually appointed. The Tribunal further held that the appellants were not senior to the respondents of the year 1979 and 1980. Hence the present appeals against the review order and dismissal of the original application.

On behalf of the appellants it was contended that the review application before the Tribunal was not maintainable since the original application filed by the appellants was disposed of; that there was a distinction between the expressions "recruitment" and "appointment" in service jurisprudence and, therefore, when Rule 26 used the expression "recruited" it must be a stage prior to the issuance of the appointment letter and logically should mean when the selection process started; and that the year in which the vacancy occurred was relevant for determination of seniority irrespective of the year in which a person was recruited.

On behalf of the respondents it was contended that the word 'year' meant a calendar year under Rule 3(f) and, therefore, Rule 26 was categorical to the effect that when the appellants and respondents were recruited in the same calendar year the respondents would be senior to the appellants.

## A Dismissing the appeal, this Court

HELD : 1.1. The expression “officers are recruited by promotion and by direct recruitment” used in Rule 26 of the Orissa Service of Engineers Rules, 1941 necessarily means that when the State Government appoints them as Assistant Engineers. To import something else into the Rule will neither be in the interest of justice nor is it necessary in any manner and it would tantamount to a legislation by the Court. When the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the Statute, the end result is neither arbitrary and irrational nor contrary to the object of the statute, then it is the duty of the Court to give effect to the words used in the Statutes as the words declare the intention of the law making authority best. In that view of the matter there is no justification to go into the question of quota meant for direct recruits and promotees nor is it necessary to find out as to the year in which the vacancy arose against which the recruitment is made. On an analysis of the scheme of the Rules it becomes clear that the expression ‘recruited’ would mean appointed and the expression ‘during the same year’ in Rule 26 would mean during the calendar year and, therefore, direct recruits recruited during the calendar year would be junior to the promotee recruits recruited during the said calendar year. Quota should not be taken into consideration while fixing inter se seniority under Rule 26. There has been no grievance on the part of the appellants-direct recruits that there has been any excess promotion beyond the quota permissible for them and consequently such question does not crop up for consideration. [686-H; 687-A-C; 690-D]

1.2. It is not possible to accept the contention that the expressions ‘recruitment’ and ‘appointment’ have two different concepts in the service jurisprudence and , therefore, when Rule 26 uses the expression ‘recruited’ it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection started. This is not the intention in the scheme of the Rules. Under the scheme of the Rules, a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would appear from Rules 5 and 6. Though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the government makes the final selection under Rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. It is, therefore, difficult to hold that in the Rules the expression ‘recruited’ should be interpreted to mean when the selection

process really started. That apart, the said expression 'recruited' applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under Rule 16. However, in both cases, the final selection vests with the State Government under Rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. The only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer. This is the crucial date for determination of seniority under the said Rule. [692-A-F]

1.3. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in Rule 26. Under this Rule the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something, which is not there in Rule 26, and thereby legislate a new Rule of Seniority. It is, therefore, not possible to accept the contention that the year in which the vacancy occurred is relevant for the purpose of determining the seniority irrespective of the year in which a person was recruited. [690-G-H; 691-A-B]

*S.G. Jaisinghani v. Union of India*, [1967] 2 SCR 703; *V.B. Badami v. State of Mysore*, [1976] 1 SCR 815; *A.N. Sehgal v. Raje Ram Sheroan*, [1992] Supp. 1 SCC 304 and *Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra*, [1990] 2 SCC 715, held inapplicable.

*T.N. Saxena v. State of U.P.*, [1991] Supp. 2 SCC 551 and *S.S. Bola v. B. Sardana*, [1997] 8 SCC 522, referred to.

2. In the present case the respondents who were not parties to the earlier proceedings not only filed an application for review but also filed an independent application and the Tribunal being of the view that independent application will not be maintainable reviewed its earlier order and the impugned order has been passed. While the appellants have challenged the

A reviewed order of the Tribunal, the respondents have filed Special Leave Petition against the order of the Tribunal dismissing their original application. Thus the entire dispute is before this Court and, therefore the issue regarding the maintainability of the review application need not be decided. [691-F-G]

B *K. Ajit Babu v. Union of India*, [1997] 6 SCC 473, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9108 of 1995 Etc.

C From the Judgment and Order dated 25.10.94 of the Orissa Administrative Tribunal, Bhubaneshwar, in M.P. No. 3229 of 1992.

M.K. Banerjee, Raju Ramachandran and Ashok Kumar Gupta for the Appellants.

D G.L. Sanghi, Janaranjan Das, Aswini Kumar Mishra and K.N. Tripathy for the Respondents.

P.N. Misra for State of Orissa.

The Judgment of the Court was delivered by

E **G.B. PATTANAİK, J.** Leave granted in SLP No. 7017 of 1998.

This appeal is directed against the order dated 25.10.1994 of the Orissa Administrative Tribunal in Misc. Petition No 3229 of 1992, arising out of Original application No. 78 of 1989. The appellants are graduates in Civil Engineering and had been recruited as Assistant Engineers in the Irrigation Wing in the Irrigation and Power Department in the State of Orissa after being duly selected by Orissa Public Service Commission in accordance with Orissa Service of Engineers Rule, 1941 (hereinafter referred to as 'The Rules'). The respondents are the promotees to the post of Assistant Engineers from amongst the Junior Engineers and Sub-Assistant Engineers. O.A. No. 78 of 1979 had been filed by the direct recruited Assistant Engineers claiming inter alia that the appointments of such direct recruits having been made against vacancies of the year 1978 they should be treated as appointees of the year 1978 and consequently their seniority should be determined on that basis under the promotee Assistant Engineers of that year notwithstanding the fact that they were factually appointed as Assistant Engineer in the year 1980. The Tribunal allowed the said application by order dated 29.6.1992. It may be

stated that the promotee Assistant Engineers of the years 1979 and 1980 had not been arrayed as party to the said proceedings. As the order of the Tribunal dated 29.6.1992 adversely affected the seniority of the promotee Assistant Engineers who had been promoted in the year 1979 and 1980 they filed a Misc. Petition which was Registered as Misc. Petition No. 3229 of 1992 for reviewing the order dated 29.6.1992. They also filed a direct Petition before the Tribunal which was registered as OA No. 2325 of 1992. The Tribunal disposed of both the Original Application as well as the Misc. Petition by the impugned judgment and came to hold that the Original Application would not be maintainable since the question of *inter se* seniority has been decided in OA No. 78 of 1989 by Order dated 29.6.1992. It, however, came to the conclusion that the review of the said order is maintainable particularly when the affected persons had not been arrayed as parties to the earlier decision. Thereafter by interpreting the Rule of seniority, particularly Rule 26 of the Rules, came to hold that the direct recruits cannot be held to be recruits of the year 1978 and on the other hand, must be held to be recruits of the year 1980 when the State Government by Notification appointed those direct recruits as Assistant Engineers in March 1980. It further came to hold that such direct recruits, therefore, cannot be held to be senior to the promotees of the year 1979 and will be juniors to promotees of the year 1980. The aforesaid order of the Tribunal reviewing the earlier order dated 29.6.1992 is the subject matter of challenge in this appeal. The promotees whose Original Application No. 2325 of 1992 was dismissed as not maintainable also filed a Special Leave Petition by way of abundant caution and that Special Leave Petition was also taken on Board and was heard alongwith the present appeal.

The brief facts culminating in the impugned order of the Tribunal may be stated as hereunder:-

That in the year 1978 forty vacancies were available in the post of Assistant Engineers in the Irrigation Wing of the Irrigation Department of the State of Orissa out of which 10 posts were to be filled up by direct recruitment in accordance with Rule 7 of the Rules. Orissa Public Service Commission issued an advertisement inviting applications from the candidates eligible for appointments to the service in the year 1979 and after completing the process of selection prepared a list of selected candidates in accordance with Rule 13 of the Rules and submitted the same to the State Government sometimes in November 1979. The State Government finally made the final selection in accordance with Rule 15 and required the selected candidates to undergo medical examination and issued letters of appointment in March 1980. Thereafter

A the appointees joined as Assistant Engineer. The respondents who are junior engineers had been promoted as Assistant Engineers in accordance with Rules on different dates in 1979 and 1980, namely, 27.8.1979, 27.11.1979, 4.2.1980, 4.11.1980 and 27.12.1980. Jagdish Patnaik, appellant No. 1 who was a direct recruit to the post of Assistant Engineer filed Original Application No. 78 of 1989 in the State Administrative Tribunal seeking the relief that he should be given the seniority in the rank of Assistant Engineer below the promoted Assistant Engineers in the year 1978 since he has been recruited to the said post against a vacancy which has arisen for the year 1978 and for the delay caused by the department he should not be made to suffer. The Tribunal was persuaded to accept the said contention raised on behalf of Shri Patnaik and it came to hold that since he has been selected against a vacancy of the year 1978 his seniority in the cadre of Assistant Engineer should be determined treating him to be a recruit of the year 1978 notwithstanding the fact that he was appointed as an Assistant Engineer by Notification dated 29th March, 1980. The Tribunal, therefore directed the State Government to fix the seniority of said Shri Patnaik below the promoted Assistant Engineers of the year 1978. It may be stated at this stage that under Rule 26 of the Rules which deals with the inter se seniority of the Assistant Engineers as between direct recruits and promotees, the promoted officers recruited during the year would be considered senior to the officers directly recruited during the year. Since the implementation of the aforesaid direction of the Tribunal adversely effected the seniority of the promotee Assistant Engineers who had been promoted during the year 1979-80 they approached the Tribunal both by filing an Application for Review and by filing an Original Application, as already stated, and the Tribunal disposed of the same by the impugned order.

F Mr. Milan Banerjee, the learned senior counsel appearing for the appellants contended that under the Rules quota having been fixed for direct recruits and for promotees and appointments having been made according to the quotas, a person appointed as a direct recruit against the quota available for the year 1978 cannot be held to be junior to a promotee who was promoted in the year 1979 or 1980. According to the learned senior counsel though Rule G 26 which deals with the question of inter se seniority between the direct recruits and promotees in the cadre of Assistant Engineer does not refer to the aforesaid quota, but once appointment itself is on the basis of quota that must be engrafted into the Rule meant for determining the inter se seniority and on that basis the impugned order of the Tribunal cannot be sustained H in law.

Mr. Banerjee, the learned senior counsel further contended that the recruitment to the cadre of Assistant Engineer being made from two different sources and the Recruitment Rules having itself prescribed the quota of recruitment from different sources the seniority inter se has to be regulated on the basis of the said quota and judged from that stand point the impugned order is unsustainable in law. Mr. Banerjee, learned senior counsel lastly submitted that after disposal of the original Application No. 78 of 1979 by entertaining an application for Review the Tribunal could not have re-considered the matter and could not have taken a contrary view than the earlier one and the impugned order, therefore, is beyond powers of review of the Tribunal.

Mr. Raju Ramachandran, learned counsel appearing for some of the interveners who are direct recruits, supported the submissions made by Mr. Banerjee, learned senior counsel and contended that there is a distinction between expression 'recruitment' and 'appointment' in service jurisprudence. The expression 'recruitment' signifies a stage prior to the issuance of an actual appointment order, therefore, when the seniority Rules contained in rule 26 uses the expression 'direct recruitment' there is no justification to construe that it is the actual year of appointment that would govern the seniority and in this view of the matter the impugned order of the Tribunal is erroneous in law. According to Mr. Ramachandran, learned senior counsel the expression 'direct recruitment' in Rule 26 of the Rules refers to the commencement of the process of recruitment which is fixed and ascertainable and not the date of actual appointment which for several reasons can be indefinitely delayed in a given case and there is no justification for construing Rule 26 in that manner.

Mr. G.L. Sanghi, learned senior counsel appearing for the promotee respondents on the other hand contended, that the language used in Rule 26 of the Rules is clear and unambiguous and on a plain gramatical meaning being given to the words used therein the conclusion is irresistible that the seniority of Assistant Engineers appointed during a particular year has to be determined on the principle that the promotees appointed during the year would be senior to the direct recruits appointed during the year, and therefore, the impugned order of the Tribunal is unassailable. Mr. Sanghi, learned senior counsel further contended that the Recruitment Rules no doubt have provided quota indicating the percentage to be appointed as Assistant Engineers by direct recruits and percentage to the appointed as Assistant Engineers on promotion but that provision has no relevance nor can it be grafted into



A Rule 26 which governs the inter se seniority of the persons appointed in the cadre of Assistant Engineer. Mr. Sanghi, learned senior counsel also submitted that in the facts and circumstances of the case Application for Review was maintainable and was rightly entertained by the Tribunal and in any event Original Application also having been filed the rights of the respondents cannot be denied in any manner.

B

Mr. P.N. Mishra, learned counsel appearing for the State of Orissa supported the submissions made by Mr. Sanghi and contended that the actual year during which the appointment is made to the cadre of Assistant Engineer, be it on promotion or be it on the basis of direct recruitment is the

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governing factor for determination of inter se seniority as is apparent from the language used in Rule 26 of the Rules. Mr. Mishra, learned counsel further contended that under the scheme of the Rule, it is the State Government who has the final power of selection both for an appointment under direct recruitment as well as appointment under promotion and until that power is exercised no person can claim to have been recruited to the service and that

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being the position the year in which the vacancies arose and against which the recruitment made is irrelevant for the purpose of determining the seniority Mr. Mishra, learned counsel further submitted that Rule 5 which deals with recruitment to service is also indicative of the fact that a person can be said to be recruited only on being appointed to the rank of Assistant Engineer and

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therefore it is not possible to construe that for the purpose of determining the seniority any date anterior to the said appointment can at all be germane consideration. Mr. Mishra, learned counsel also submitted that the word 'year' having been defined to mean a calendar year under Rule 3(f) of the Rules and Rule 26 being categorical to the effect that the officers recruited by promotion and by direct recruitment during the same calendar year the

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promoted officers would be considered senior to the direct recruited officers, it is only logical to hold that when they are appointed to the post of Assistant Engineer which would be taken into account for the purpose of seniority and not otherwise.

G

Correctness of the rival submissions would depend upon an interpretation of the relevant provisions of the Rules and for that purpose it would be necessary to notice the scheme of the Rules itself.

H

Rule 4 of the Rules indicate the strength of the cadre and it includes posts starting from Assistant Engineer to the Chief Engineer. Rule 5 deals with recruitment to the service and the expression 'service' has been defined

in Rule 3(a) to mean Orissa Service of Engineers. A

Under Rule 5 first appointment to the service has to be made to the rank of Assistant Engineer ordinarily.

Rule 6 deals with the mode of recruitment to the rank of Assistant Engineer and under the said Rule the said recruitment is made partly by direct recruitment in accordance with Rules 8 to 15 and partly by promotion from the subordinate Engineering Service and the Junior Engineers Service in accordance with Rules 16 to 18. B

Under Rule 7 the Government decides the number of vacancies to be filled each year and it further provides that out of the vacancies posts to be filled up by promotion from Sub-Assistant Engineers should be such as it would not exceed the 25% of the total strength of the permanent and temporary Assistant Engineers including the leave and training reserve and those officiating as Executive Engineers. Out of the remaining vacancies 2/3rd would be filled up by promotion from the rank of Junior Engineers and the rest by direct recruitment. C D

Rule 9 prescribes the qualification for the direct recruitment of Assistant Engineer.

Rule 10 is the procedure which the Public Service Commission is required to adopt by inviting applications for the vacancies to be filled up by direct appointment. E

Rule 11 provides for submission of application forms to the Commission. And

Rule 12 provides for consideration of those application by the Commission and interviewing all candidates who are likely to be suitable for appointment. F

Rule 13 prescribes that the Commission shall prepare a list of selected candidates, arranged in order of preference, and the said list is required to be submitted to the Government alongwith the recommendations of the Commission. G

Rule 14 and 14 A deal with reservation in favour of Scheduled Castes and Scheduled Tribe candidates.

Rule 15 provides for final selection of the candidates to be made by the H

A Government from amongst the list submitted by the Commission. In Rule 15 B candidates so selected would be examined by a Medical Board and on being found medically fit letters of appointments can be issued.

Rules 16 to 18 is the procedure prescribed for promotion of the candidates who are either Junior Engineers or in Subordinate Engineering Service. And in their case also the final selection lies with the State Government under Rule 18.

Rule 19 provides for probation of direct recruits for a period of 2 years and for promotees a period of one year.

C Rule 20 is the provision for confirmation.

Rule 26 with which we are really concerned in the present case is the rule of seniority. It would be appropriate to extract the said Rule 26 in extenso:-

D “Rule 26 - Seniority - (1) When officers are recruited by Promotion and by direct recruitment during the same year, the promoted officers shall be considered senior to the officers directly recruited irrespective of their dates of joining the appointment.

E (2) Between the two groups of promoted officers, those promoted from the rank of Sub-Assistant Engineers shall en bloc be senior to those promoted from the rank of Junior Engineers.

F (3) Subject to provision of Sub-rules (1) and (2) seniority of officers shall be determined in accordance with the order in which their names appear in the lists prepared by the Commission.”

The very scheme of recruitment under the Rules, as indicated above, unequivocally indicates that in case of direct recruit the final authority lies with the State Government who issues appointment orders from amongst the persons found eligible by the Public Service Commission and further who have been found medically fit by the Medical Board. Even such an appointee is also required to undergo probation for two years and there after he can be confirmed in the service. Under Rule 26, which is the Rule for determining inter se seniority between promotees and direct recruits when the expression used is ‘officers are recruited by promotion and by direct recruitment’ necessarily it means that when they are appointed as Assistant Engineers by the State Government. To import something else into the Rule will neither be

in the interest of justice nor is it necessary in any manner and it would tantamount to a legislation by the Court. It is a well known principle of construction of statute that when the language used in the statute is unambiguous and on a plain gramatical meaning being given to the words in the Statute, the end result is neither arbitrary, irrational or contrary to the object of the statute, then it is the duty of the Court to give effect to the words used in the Statutes as the words declare the intention of the law making authority best. In that view of the matter we do not see any justification to go into the question of quota meant for direct recruits and promotees nor is it necessary to find out as to the year in which the vacancy arose against which the recruitment is made. On an analysls of the scheme of the Rules, as narrated earlier, we are of the considered opinion that the expression 'recruited' would mea appointed and the expression 'during the same year' in Rule 26 would mean during the calendar year and, therefore, direct recruits recruited during the calendar year would be junior to the promotee recruits recruited during the said calendar year.

Mr. Banerjee learned senior counsel appearing for the appellants, however, stenuously urged that when the Recruitment Rules provide for different quotas in the rank of Assistant Engineer and persons are appointed against those quotas the seniority must be governed accordingly and, therefore, the year in which the vacancies arose and against which the recruitment is made would get engrafted into the rule meant for determining the inter se seniority. In support of this contention the learned senior counsel placed reliance on the decisions of this Court in *S.G. Jaisinghani v. Union of India & Ors.*, (1967) 2 Supreme Court Reports 703, *V.B. Badami etc. v. State of Mysore & Ors.*, [1976] 1 Supreme Court Reports 815, *T.N. Saxena & Ors., v. State of U.P. & Ors.*, [1991] Supp. 2 Supreme Court Cases 551, and *A.N. Sehgal & Ors., v. Raje Ram Sheoran & Ors.*, [1992] Supp. (1) Supreme Court Cases 304.

In *Jaisinghani's* case (supra) the validity of Rule 1(f)(iii) of the Seniority Rules framed in 1952 was under challenge *inter alia* on the ground that the said Rule was bases upon an unjustifiable classification between direct recruits and promotees after they had entered into Class I Grade II service. This Court negatived the said contention on a finding that under the said Rule three years of outstanding work in Class II is equal to two years of probation in Class I service and on consideration of this aspect of the matter the promotee is given seniority over the direct recruit on completing the period of probation in the same year. On a thorough analysis of the different provisions of the Rules this Court also came to the conclusion that Rule 1(f) (iv) is based on

A a reasonable classification and does not violate the guarantee under Articles 14 and 16. Mr. Banerjee, learned senior counsel appearing for the appellants, however, placed strong reliance on the observations of this Court in *Jaisinghani's* case whereunder the Court had observed "we are of the opinion that having fixed the quota in exercise of the power under Rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e., rule 1 (f)(iii) (iv), is not unreasonable and does not offend Article 16 of the Constitution."

The aforesaid observation had been made when the allegation that there was excessive recruitment of promotees in violation of the Quota Rule was being considered and examined. In the case in hand there is no assertion by the appellants-direct recruits that promotees have been recruited to the cadre of Assistant Engineer in excess of the quota provided for them. We are not in a position to hold that in *Jaisinghani's* case anything has been said by this Court to even suggest that whenever in a Recruitment rule quota is fixed for different feeder cadre then the said quota gets engrafted into the Seniority Rules and seniority has to be determined thereby. If an allegation is made by the direct recruits that at a given point of time or during a calendar year the promotees were in excess of the quota available for them under the Rules then such of those promotees who are found to be in excess of the quota would obviously be held to be recruits contrary to the Rules and as such, would not have any right to the post, but such an allegation has not been made in the case in hand and consequently the question does not arise for consideration. In our considered opinion the decision of this Court in *Jaisinghani's* case cannot be held to have laid down an inflexible rule that a quota having been fixed for recruitment to a service for different feeder cadres the said quota protento gets embodied into the Seniority Rule.

In *Badami's* case (*supra*) on which Mr. Banerjee, learned senior counsel strongly relied upon what really fell for consideration of this Court is whether the direct recruits were really recruited against the vacancies available in their quota and as such would be senior to the promotees? This Court rejected the contention of the promotees that the said direct recruits were recruited against temporary vacancies and held that they having been recruited against the vacancies meant for their quota would be senior to the promotees under the

Seniority Rules. In the absence of any such grievance in the case in hand we fail to understand as to how the aforesaid decision will be of any assistance in interpreting Rule 26 of the Rules.

The next decision on which the learned senior counsel relied upon is *T.N. Saxena's* case (supra). In this case the dispute relating to inter se seniority between direct recruits and promotees to the post of Senior Marketing Inspector was for consideration before this Court and the Court had given certain earlier directions while disposing of an appeal. Pursuant to the said direction a fresh seniority list had been drawn up and that seniority list had been assailed on the ground that the earlier direction of the Court has not been implemented. In disposing of the matter the Court had observed that in drawing up the seniority list the earlier direction of the Court has not been borne in mind and consequently the list was quashed.

Mr. Banerjee, the learned senior counsel further very much relied upon the observations made by this Court in *Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra* case, [1990] 2 SCC 715, a portion of which has been extracted in Saxena's case to the effect—

“When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources and if rules are framed in this regard, it must ordinarily be followed strictly.”

There is no dispute with the aforesaid proposition nor is there any dispute in the present case that neither quota has been fixed or quota fixed has been violated in filling up the post in the cadre of Assistant Engineers. That being the position, the aforesaid decision also is of no assistance to the contention raised.

The last case on which Mr. Banerjee, learned senior counsel relied upon is the case of *A.N. Sehgal*, (supra). In this case the inter se seniority between the direct recruits and promotees in Haryana Service of Engineers Class I PWD (Roads and Buildings Branch) Rules, 1960, came up for consideration. On consideration of the relevant provisions of the Rules the Court came to the conclusion that when under Rule 5(2)(a) the quota for appointment of direct recruits Assistant Executive Engineers has been fixed at 50% and proviso to said Rule merely enables the State Government to promote in excess of 50% of the Assistant Engineer, the intendment of the proviso is that so long as eligible direct Assistant Engineers are not available for appointments

A as Executive Engineer a promotee from Class II service could be allowed to officiate in excess of the quota but the moment the direct recruits are available they alone would be entitled to fill up the posts and promotees will have to give place to the said direct recruits. And this being the position those promotees who had been recruited in excess of the quota under the proviso cannot get seniority over the direct recruits who were within the quota of 50% available for them. The ratio of the aforesaid case also will have no application to the case in hand. It may be stated that subsequent to this decision the Haryana Legislators amended the Recruitment Rules giving it retrospective effect as aforesaid interpretation given by this Court caused undue hardship and a situation which cannot be conceived of and the said later Rule has also been considered by this Court by a Bench of three Hon'ble Judges in *S.S. Bola & Ors. v. B.D. Sardana*, [1997] 8 Supreme Court Cases 522, and the rule has been held to be valid. In the aforesaid premises, we are unable to accept the contention of Mr. Banerje, the learned senior counsel, that under the Rules in question quota having been fixed, while interpreting inter se seniority under Rule 26 that should be borne in mind. As we have stated earlier, there has been no grievance on the part of the appellants direct recruits that there has been any excess promotion beyond the quota permissible for them and consequently such question does not *crop up* for consideration.

The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited? Mr. Banerjee's contention on this score is that since the appellant was recruited to the cadre of Assistant Engineer in respect of the vacancies that arose in the year 1978 though in fact the letter of appointment was issued only in March 1980, he should be treated to be a recruit of the year 1978 and as such would be senior to the promotees of the years 1979 and 1980 and would be junior to the promotees of the year 1978. According to the learned counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally select them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in the Rules of Seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into

for determination of the *inter se* seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislate a new Rule of Seniority. We are, therefore, not in a position to agree with the submission of Mr. Banerjee, the learned senior counsel appearing for the appellants on this score.

The only question that survives for consideration raised by Mr. Banerjee learned senior counsel appearing for the appellants is whether the Tribunal was justified in entertaining an application for review and ultimately reversing the earlier decision? In support of this contention reliance has been placed on the decision of this Court in *K. Ajit Babu & Ors. v. Union of India & Ors.*, - 1997 (6) Supreme Court Cases 473. In the said case what was held by this Court, after analysing the provisions of the Administrative Tribunal Act is that the right of review is available only to those who are party to a case and even if a wider meaning is given to the expression 'person feeling aggrieved' accruing in Section 22 of the Administrative Tribunal Act then whether such person can seek the review by opening the whole case has to be decided by the Tribunal in the facts and circumstances. The Court also held that the right to review is possible only on limited grounds although strictly speaking Order 47 R.1 Civil Procedure Code may not be applicable and when such application is filed within the period of limitation. This Court also held that when the application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decisions of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. But in the case in hand the respondents who were not parties to the earlier proceedings not only filed an application for review but also filed an independent application and the Tribunal being of the view that independent application will not be maintainable reviewed its earlier order and the impugned order has been passed. While the appellants have challenged the reviewed order of the Tribunal respondents have filed a Special Leave Petition against the order of the Tribunal dated 29.10.1994 dismissing their original application No. 2335 of 1992 holding the same to be not maintainable. In this view of the matter the entire dispute is before this Court and we have also heard the parties at length and the question that review is not maintainable really does not arise.

The only other contention which requires consideration is the one



- A raised by Mr. Raju Ramachandran, learned senior counsel appearing for the intervenors to the effect that expression 'recruitment' and 'appointment' have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression 'recruited' it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection process started and that appears to be the intendment of the Rule Makers in Rule 26.
- B We are, however, not persuaded to accept this contention since under the scheme of Rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would appear from Rule 5 and Rule 6. Then again in case of direct recruits though the process of recruitment starts when the Public Service Commission invites applications
- C under Rule 10 but until and unless the Government makes the final selection under Rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the Seniority Rule the expression 'recruited' should be interpreted to mean when the selection process really started. That apart the said expression
- D 'recruited' applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under Rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests
- E with the State Government under Rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of
- F Assistant Engineer, is the crucial date for determination of seniority under the said rule. Mr. Raju Ramachandran's contention, therefore, cannot be sustained.

In the premises, as aforesaid, the appeal fails and is dismissed. But in the circumstances there will be no order as to costs.

- G In view of the decision in C.A. No. 9108 of 1995 the appeal arising out of SLP No. 7017 of 1998 does not survive and no further order is required to be passed therein.

V.S.S.

Appeal dismissed.