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IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) Nos. 36470 & 36490 of 2021, W.P.(C) Nos.
9137 & 25137 of 2022 and W.P.(C) No. 3113 of 2026
W.P.(C) No. 36490 of 2021**

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

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Hemabanti Patra & Ors.

....

Petitioners

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioners : Mr. S.K. Das, Advocate

For Opp. Parties : Mr. A. Tripathy,
Addl. Govt. Advocate
Mr. N. Rath, Advocate
(Opp. Party No. 2)
Ms. P. Rath, Sr. Advocate
along with
Ms. S. Prusty, Advocate
(Private Opp. Parties)

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 18.03.2026 & Date of Judgment: 05.05.2026



Biraja Prasanna Satapathy, J.

1. Since the issue involved in the present batch of writ petitions is identical and the preliminary issue is with regard to fixation of seniority in between the appointees to the rank of OAS Gr-A (JB) vide notification dt.04.03.2016 by way of direct recruitment and the promotees vide notification dt.17.10.2015, all the matters were heard analogously and disposed of by the present common judgment.

However, for the sake of brevity W.P.(C) No. 36490 of 2021 is taken as the leading case for the purpose of dealing with the pleadings and the annexures.

2. While W.P.(C) Nos. 36490 & 36470 of 2021 have been filed challenging office order dtd.15.11.2021 so passed by Opp. Party No. 1 under Annexure-9 and with a further prayer to direct the Opp. Parties to uphold the final gradation list of OAS Group-A (JB) published on 08.03.2019 under Annexure-7, with regard to fixation of inter se seniority between the direct recruits and the promotee officers, W.P.(C) No. 9137 of 2022 has been filed with a prayer to finalize the gradation list of OAS Group-A (JB) so published on 22.12.2021 in



terms of order dtd.15.11.2021 taking into account the view of the Law Department.

Similarly, W.P.(C) No. 25137 of 2022 has been filed inter alia challenging order dtd.21.09.2022, wherein Govt. called for the status of the vigilance proceeding/criminal proceeding pending against the Officers continuing in the rank of OAS Group-A (JB) for their promotion to the rank of OAS Group-A (SB).

W.P.(C) No. 3113 of 2026 was lastly filed with a prayer to strike down Para 6 & 7 of G.A. Department Resolution dtd.09.09.2021.

3. Learned counsel appearing for the Petitioners contended that Odisha Public Service Commission (in short Commission) issued an advertisement vide Advertisement No. 05/2011-12 on 17.11.2011, for conducting the recruitment of OCS Examination-2011 under Annexure-1. Subsequently, while issuing a corrigendum on 16.12.2011, the vacancy position was enhanced.

3.1. It is contended that challenging the advertisement so published by the Commission on 17.11.2011, a writ petition was filed in W.P.(C) No. 18471 of 2012 and with a prayer to allow the Petitioners therein to



take part in the recruitment examination, as there is no recruitment held from the year 2007 to 2010. The writ petition was allowed by this Court vide order dtd.30.08.2013 and accordingly, OPSC issued the 2nd corrigendum on 10.10.2013 by allowing the candidates those who are eligible for their recruitment as against the recruitment year 2007 to 2010 to participate in the selection process.

3.2. It is contended that while the matter stood thus, Private Opp. Parties were given the benefit of ad hoc promotion from the rank of ORS Group-B to the rank of OAS Group-A (JB), against the recruitment year 2015 vide notification dtd.17.10.2015 under Annexure-3. Similarly, on completion of the recruitment process so initiated vide Advertisement dtd.17.11.2011, Petitioners were appointed as against the post of OAS Group-A (JB), vide notification dtd.04.03.2016 under Annexure-2 series. The promotees who were appointed on promotion on ad hoc basis vide notification dtd.17.10.2015, were appointed on regular basis after concurrence of the OPSC vide notification dtd.25.04.2017 under Annexure-4.

3.3. It is contended that by the time Petitioners were appointed as direct recruitees, basing on the advertisement dtd.17.11.2011 as against the recruitment year 2011 vide notification dt.04.03.2016 and



the Private Opp. Parties got the benefit of promotion to the rank of OAS Group-A (JB) as against the recruitment year 2015 vide notification dtd.17.10.2015, the State Govt. vide notification dtd.25.06.2011 under Annexure-5, had already notified the Odisha Administrative Service (Method of Recruitment & Conditions of Service) Rules, 2011 (in short 2011 Rules). As provided under the aforesaid 2011 Rules, more particularly under Rule 4, 50% of the posts in the OAS Group-A (JB) was required to be filled up by way of direct recruitment through competitive examination and 50% by way of promotion from amongst the members belonging to the Odisha Revenue Service (ORS).

3.4. However, Rule 11 of the said Rules, deals with the inter se seniority of such OAS Group-A (JB) Officers in respect of a particular recruitment year and the same reads as follows:-

“11. Inter se seniority:- (1) The inter se seniority of OAS Group 'A' (JB) officers in respect of a particular recruitment year shall be in the following order and in each category the inter se seniority shall be determined in the following manner:

(i) Promotee officers shall be ranked inter se in the order in which their names appear in the select list.



(ii) Direct Recruit officers shall be ranked inter se in the order in which their names appear in the merit list prepared by the commission.

(2) The inter se seniority of the officers in other grades shall be in the order in which their names appear in the select list.”

3.5. It is contended that taking into account the provisions contained under Rule 11 of the 2011 Rules, a tentative gradation list of OAS Group-A (JB) was published by the Opp. Party No. 1 on 25.08.2018 under Annexure-6. In the said tentative gradation list, Petitioners who are the appointees as against the recruitment year 2011, were placed above the Private Opp. Parties, who were promoted as against the recruitment year 2015. The tentative gradation list so published on 25.08.2018, was made final with issuance of the final gradation list on 08.03.2019 under Annexure-7. In the said final gradation list, Petitioners were also placed above the promotee OAS Group-A (JB) Officers.

3.6. It is contended that challenging such placement of the Private Opp. Parties in the final gradation list published on 08.03.2019, they approached this Court by filing W.P.(C) No. 19346 of 2019. This Court vide order dtd.29.07.2021, when permitted the Private Opp. Parties to raise their grievance before Opp. Party No. 1 and for its consideration, the impugned order was passed by Opp. Party No. 1 on



15.11.2021 under Annexure-9. Vide the said impugned order; Private Opp. Parties were directed to be placed above the Petitioners, inter alia with the finding that inter se seniority is to be governed on the basis of the date of joining and not on the basis of the recruitment year.

3.7. Learned counsel appearing for the Petitioners while assailing the impugned order dtd.15.11.2021, vehemently contended that since Petitioners were appointed as against the post of OAS Group-A (JB) for the recruitment year 2011, in terms of the advertisement issued by the Commission on 17.11.2011 vide notification dtd.04.03.2016 under Annexure-2, and Private Opp. Parties were only promoted to the rank of OAS Group-A (JB) vide notification dtd.17.10.2015 under Annexure-2 series as against the recruitment year 2015, in view of the decision of the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. N.R. Parmar & Ors.***, (2012) 13 SCC 340, they were placed rightly above the Private Opp. Parties in the final gradation list published on 08.03.2019 under Annexure-7.

3.8. But without proper appreciation of the position of the Petitioners vis-à-vis Private Opp. Parties so reflected in the final gradation list dtd.08.03.2019, vide the impugned order dt.15.12.2021 under



Annexure-9, the same was reversed by giving seniority to the Private Opp. Parties above the Petitioners without following the decision in the case of **N.R. Parmar**. Hon'ble Apex Court in the case of **N.R. Parmar** in Para 23, 33, and 50 to 52 has held as follows:-

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

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

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



described as “rotation of quotas” in some of these instruments.

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33. The same is being extracted hereunder:
“Department of Personnel and Training
Estt.(D) Section

Notes from p. 17/ante may please be seen with reference to our earlier note on pp. 9-10 ante.

With reference to ‘X’ on p. 18 and ‘Y’ on p. 19/ante, it will be clear from our note on pp. 9-10/ante that if action for the Recruitment Year 1986-1987 has been initiated at any time during that recruitment year even if the exam is held in 1988 and the results are declared in 1989 and the candidate join only in 1990, since the action for recruitment was initiated in 1986-1987 itself merely because the process of recruitment took so long for which the candidates cannot be blamed and since the responsibility for the delay in completing the process of recruitment squarely lies with the administration, it would not be appropriate to deprive the candidates of their due seniority of 1986-1987. Consequently, if action was initiated during the Recruitment Year 1986-1987 even if it culminates in the joining by the selected candidates only in 1990, they will get seniority of 1986-1987. This applies equally to DRs as well as promotees. In other words, if such DRs of 1986-1987 ultimately join in 1990 yet they will be rotated with promotees of 1986-1987.

As regards Point (1) on p. 19/N, it is clarified that ‘initiation of action for recruitment/initiation of recruitment process’ would refer to the date of sending the requisition to



the recruiting authority for a particular recruitment year in question.

Points (2) and (3) are the concern of Estt.(B).

As regards Point (4), it is clarified that as already stated the concept of initiation of action for recruitment is applicable equally to direct recruits and promotees.

As regards Point (5), it may be stated that even if DoPT is also one of the respondents, it is for the Administrative Ministry/Department who are concerned with the persons involved in the CAT court case to take necessary action on behalf of DoPT also. In any case, our comments are already contained in our earlier note as well as this note. It is for the Administrative Ministry/Department to incorporate them suitably in the counter-reply. Hence, the counter-reply on pp. 159-75/Cor. may be suitably modified in the light of our advice on pp. 9-10/ante as already advised at 'X' on p. 10/ante and this note.

In future, the Department of Revenue, if they want our advice, refer such cases well in time (instead of making such reference at the eleventh hour) to enable us to consider the matter in its proper perspective without any time constraint.

Estt.(B) may please see for comments on Points (2) and (3) on pp. 19-20/ante before the file is returned to the Department of Revenue.

*sd/-
(Under-Secretary)
2-2-2000."
(emphasis supplied)*



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50. The seniority rule applied in Jagdish Ch. Patnaik case [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] has been extracted in para 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In Suraj Parkash Gupta case [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] , the relevant seniority rule was extracted in para 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words “date of first appointment” would mean the date of first substantive appointment against a clear vacancy. In Pawan Pratap Singh case [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in Pawan Pratap Singh case [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7-2-1986 and 3-7-1986 (which are the subject of interpretation insofar as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned counsel are inapplicable to determine the present controversy.



51. One finds attracted to the observations recorded in Jagdish Ch. Patnaik case [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] wherein it was observed: (SCC p. 464, para 24)

“24. ... 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, 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 statute [because] the words declare the intention of the law-making authority best.”

We are of the view that the aforesaid observations are fully applicable to the present controversy. We may add that various ONs and letters issued by the DoPT (referred to above) do not leave room for any ambiguity.

52. Having interpreted the effect of the OMs dated 7-2-1986 and 3-7-1986 (in paras 25 to 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried-forward vacancies, or vacancies which came to be filled up by a “later” examination/selection process. The facts only reveal that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter se seniority between the direct recruits



and promotees, carried out through the OM dated 7-2-1986, and the compilation of the instructions pertaining to seniority in the OM dated 3-7-1986, leave no room for any doubt, that the “rotation of quotas” principle would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.”

3.9. It is also contended that the impugned order dtd.15.11.2021 under Annexure-9 was passed relying on the decision rendered by the Hon’ble Apex Court in the case of ***K. Meghachandra Singh & Ors. vs. Ningam Siro & Ors.***, (2020) 5 SCC 689 and the notification issued by the G.A. & P.G. Department on 09.09.2021 under Annexure-10. As per the said notification, G.A. & P.G. Department issued the guideline for fixation of inter se seniority of the employees in terms of the judgment in the case of ***K. Meghachandra Singh***. Hon’ble Apex Court in Para 39 of the Judgment in the case of ***K. Meghachandra Singh*** however has held as follows:-

“39. The judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish



Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] , Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] . These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] . Accordingly, the decision in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

3.10. Learned counsel appearing for the Petitioners accordingly contended that since Petitioners were appointed as against the post of OAS Group-A (JB) against the recruitment year 2011 and that too pursuant to the advertisement issued by the Commission on



17.11.2011 under Annexure-1 and the Private Opp. Parties were only promoted as against the recruitment year 2015 vide notification dtd.17.10.2015 under Annexure-2 series and were regularly appointed vide notification dtd.25.04.2017 under Annexure-4, following the decision in the case of ***K. Meghachandra Singh*** so reflected in Para 39, the Private Opp. Parties could not have been placed above the Petitioners, so held in the impugned order dtd.15.11.2021 under Annexure-9, as the decision in the case of ***K. Meghachandra Singh*** is to apply prospectively and the seniority already fixed basing on the decision in the case of N.R. Parmer is not to be interfered with.

3.11. It is also contended that since final gradation list published on 08.03.2019 was published in terms of the decision in the case of N.R. Parmar so cited (supra), in view of the decision in the case of ***K. Meghachandra Singh***, more particularly so reflected in Para 39, seniority so fixed is protected and it cannot be changed relying on the decision in the case of ***K. Meghachandra Singh***. It is accordingly contended that with quashing of the impugned order dtd.15.11.2021, the final gradation list published on 08.03.2019, be treated as the final gradation list of the Petitioners vis-a-vis the Private Opp. Parties in the rank of OAS Group-A (JB).



4. Ms. P. Rath, learned Sr. Counsel appearing for the Private Opp. Parties on the other hand while supporting the impugned order dtd.15.11.2021, made her submission contending inter alia that Petitioners though participated in the direct recruitment basing on the advertisement issued by the Commission on 17.11.2011 under Annexure-1, but they were only appointed on completion of the selection process vide notification dtd.04.03.2016 under Annexure-2 series. Prior to such appointment of the Petitioners vide notification dtd.04.03.2016, Private Opp. Parties had already got the benefit of promotion to the rank of OAS Group-A (JB) vide notification dtd.17.10.2015 under Annexure-2 series.

4.1. It is contended that since Private Opp. Parties admittedly joined in the rank of OAS Group-A (JB) ahead of the Petitioners, they are eligible and entitled to be placed above the Petitioners, who are the direct recruitees. But in the final gradation list published on 08.03.2019 under Annexure-7, when the Private Opp. Parties were placed below the direct recruitees/Petitioners, the same was challenged by the Private Opp. Parties before this Court in W.P.(C) No. 19346 of 2019. Pursuant to the order passed by this Court on 29.07.2021 and while considering the representation made pursuant to



such order of this Court, Private Opp. Parties have been rightly placed above the Petitioners as per the impugned order dtd.15.11.2021 under Annexure-9.

4.2. While supporting the impugned order, learned Sr. Counsel appearing for the Private Opp. Parties contended that neither the decision in the case of ***N.R. Parmar*** nor the decision in the case of ***K. Meghachandra Singh*** are applicable to the service disputes in the State of Odisha, as in both the decisions, the issue was with regard to the ROTA-QUOTA Rules of determination of seniority so laid down for service cadre, under the Rules governing the cadre.

4.3. It is contended that judgment in the case of ***N.R. Parmar*** was with regard to determination of the inter se seniority between the direct recruitees and the promotees of Income Tax Inspectors in the Income Tax Department. The issue in the case of ***N.R. Parmar*** was with regard to interpretation of office memorandum issued by the Department and it has got no general applicability to the State of Odisha. It is accordingly contended that since the decision in the case of ***N.R. Parmar*** is not applicable to the issue involved with regard to fixation of seniority in the State of Odisha, stand taken by the Petitioners that final gradation list published on 08.03.2019 under



Annexure-7 relying on the decision in the case of **N.R. Parmar** is not to be interfered with is not acceptable. Similarly, the decision in the case of **K. Meghachandra Singh**, is also not applicable as in the said decision similar office memorandum issued by the Central Govt. of the Income Tax Department was the issue therein.

4.4. It is accordingly contended that, since neither the decision in the case of **N.R. Parmar** nor the decision in the case of **K. Meghachandra Singh** is applicable with regard to fixation of the seniority of the Officers in the rank of OAS Group-A (JB) in the State of Odisha, the said decisions have got no general applicability and stand taken by the Petitioners that they are protected by the decision in the case of **N.R. Parmar**, so upheld in Para 39 of the Judgment in the case of **K. Meghachandra Singh** is not acceptable.

4.5. It is also contended that relying on the decision in the case of **K. Meghachandra Singh**, notification issued by the G.A. & P.G. Department on 09.09.2021 under Annexure-10, has also got no applicability.

4.6. Learned Sr. Counsel further contended that since admittedly the Private Opp. Parties were promoted to the rank of OAS Group-A (JB) vide notification dtd.17.10.2015 and Petitioners were appointed vide



notification dtd.04.03.2016, taking into account the date of the joining of the Private Opp. Parties earlier than the Petitioners and in view of the decisions of the Hon'ble Apex Court in the case of :-

(i) *Jagdish Chandra Pattanaik Vs. State of Odisha*,
(1998) 4 SCC 456

(ii) *State of Bihar & Ors. Vs. Arbind Jee*, 2021 SCC
OnLine SC 821

(iii) *Pawan Pratap Singh & Ors. Vs. Reevan Sing & Ors.*,
2011 (3) SCC 267

(iv) *Gangra Vishan Gujrati & Ors. Vs. State of Rajasthan*, 2019 (16) SCC 28

(v) *P. Sudhakar Rao Vs. U. Govinda Rao & Ors.*, 2013
(8) SCC 693, Petitioners have been rightly directed to be placed below the Private Opp. Parties in the impugned order dt.15.11.2021.

4.7. Hon'ble Apex Court in Para 2, 3, 6, 8, 24, 32 & 36 of the judgment in the case of *Jagdish Chandra Pattanaik* has held as follows:-

“2. This appeal is directed against the order dated 25-10-1994 of the Orissa Administrative Tribunal in Miscellaneous Petition No. 3229 of 1992, arising out of Original Application No. 73 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 promotees to the post of Assistant Engineers from amongst the Junior Engineers and Sub-Assistant Engineers. OA 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 Engineers 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 years 1979 and 1980 they filed a miscellaneous petition which was registered as Miscellaneous 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 miscellaneous 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. 73 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, it 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 along with the present appeal.

3. 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 Engineer 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 sometime 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 the appointees joined as Assistant Engineers. 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 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 29-3-1980. The Tribunal, therefore directed the State Government to fix the seniority of the 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 affected 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.

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6. 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 the expressions “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 rule 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.

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8. 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



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 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 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 a 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 among the officers recruited by promotion and by direct recruitment during the same calendar year the 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.

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24. 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:



“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.

(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.

(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 the case of direct recruits 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 thereafter 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 legislation by the Court. It is a well-known principle of construction of a statute that 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, 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 statute 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 analysis of the scheme of the Rules, as narrated earlier, we are of the considered opinion 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.

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32. 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 selects 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.

36. *In view of the decision in CA 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.”*

4.8. Hon’ble Apex Court in Para 12 of the Judgment in the case of **Arbind Jee** has held as follows:-

“12. The principles enunciated in Shitla Prasad Shukla [Shitla Prasad Shukla v. State of U.P., 1986 Supp SCC 185 : 1986 SCC (L&S) 584] are applicable to the case at hand. The compassionate appointment of the respondent is not being questioned here but importantly he is claiming seniority benefit for 10 years without working for a single



day during that period. In other words, precedence is being claimed over other regular employees who have entered service between 1985 to 1996. In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous. Such view was expressed in many cases and most recently in *Ganga Vishan Gujrati v. State of Rajasthan* [*Ganga Vishan Gujrati v. State of Rajasthan*, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] . Dr D.Y. Chandrachud, J. speaking for the Court opined as under : (*Ganga Vishan Gujrati case* [*Ganga Vishan Gujrati v. State of Rajasthan*, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] , SCC p. 52, para 45)

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [*Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in *State of Bihar v. Akhoury Sachindra Nath* [*State of Bihar v. Akhoury Sachindra Nath*, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and *State of Uttaranchal v. Dinesh Kumar Sharma* [*State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] .”



4.9. Hon'ble Apex Court in Para 33, 37, 45(i)-(iii), 45(1)(b) of the Judgment in the case of **Pawan Pratap Singh & Ors.** has held as follows:-

“33. Rule 4(h) defines “substantive appointment” as an appointment, not being an ad hoc appointment, on a post in the cadre of service, made after selection in accordance with the service rules relating to that service. It, thus, becomes abundantly clear that for determination of inter se seniority between the two rival groups (the 1991 and the 1994 appointees by direct recruitment) what is relevant is the date of the order of their substantive appointment and since the substantive appointment of the 1991 appointees is much prior in point of time, they must rank senior to the 1994 appointees.

37. In Ram Janam Singh v. State of U.P. [(1994) 2 SCC 622 : 1994 SCC (L&S) 716 : (1994) 27 ATC 166] this Court reiterated that the date of entry into a service is the safest rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from different sources. It was observed that this is consistent with the requirement of Articles 14 and 16 of the Constitution. It was, however, observed that if the circumstances so require, a group of persons can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority, but, normally such classification should be by statutory rule or rules framed under Article 309.

45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:



(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.”

4.10. Hon’ble Apex Court in Para 17, 18, 22, 26.2, 26.4, 35, 44 & 45 of the Judgment in the case of **Ganga Vishan Gujrati & Ors.** has held as follows:-

“17. The 1960 Rules were made to govern the recruitment and other conditions of service of persons appointed to the subordinate service in various departments of the State other than posts regarding which separate service rules had been or would be promulgated. Rule 9 provided for a year-wise determination of vacancies on 1



April of each year by the appointing authorities. Rule 9 of the 1960 Rules stipulated thus:

“9. Determination of vacancies.—(1)(a) *Subject to the provisions of these Rules, the appointing authority shall determine on 1st April every year, the actual number of vacancies occurring during the financial year.*

(b) Where a post is to be filled in by a single method as prescribed in the rule or schedule, the vacancies so determined shall be filled in by that method.

(c) Where a post is to be filled in by more than one method as prescribed in the Rules or Schedule, the apportionment of vacancies, determined under clause (a) above, to each such method shall be done maintaining the prescribed proportion for the overall number of posts already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota.

(2) The appointing authority shall also determine the vacancies of earlier years year-wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in.”

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18. On 2-3-2001, the Rajasthan Subordinate Services (Recruitment and Other Service Conditions) Rules, 2001 (the 2001 Rules) were notified under the proviso of Article 309 of the Constitution. Rule 13 of the 2001 Rules requires the



appointing authority to determine the vacancies actually occurring on 1st April of every financial year:

“13. Determination of vacancies.—*(1) Subject to the provisions of these Rules, the appointing authority shall determine on 1st April every year, the actual number of vacancies occurring during the financial year.*

(2) Where a post is to be filled in by a single method as prescribed in the Rule or Schedule, the vacancies so determined shall be filled in by that method.

(3) Where a post is to be filled in by more than one method as prescribed in Rules or Schedule, the apportionment of vacancies, determined under sub-rule (1) above, to each such method shall be done maintaining the prescribed proportion for the overall number of post(s) already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota.

(4) The appointing authority shall also determine the vacancies of earlier years year-wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in.”

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22. *Rule 347-B of the 1957 Rules contains a reference to the 1972 Rules. The 1972 Rules comprised of six rules, which are extracted below:*



“1. Short title and commencement.—(1) These Rules may be called the Rajasthan Services (Recruitment by Promotion against Vacancies of earlier years) Rules, 1972.

(2) They shall come into force at once.

2. Where a service rule, regulating recruitment and condition of service made under the proviso to Article 309 of the Constitution of India, provides for recruitment by both direct recruitment and promotion and where promotion quota of any earlier year could not be filled up in the absence of recommendations of the Departmental Promotion Committee appointed under the rule pertaining to the service the appointing authority shall determine the number of vacancies which were required to be filled up by promotion specifying the year with reference to which the vacancies are to be filled up.

3. The Departmental Promotion Committee, appointed under the service rules referred to in Rule 2 shall make their recommendation within a period of three months from the date the competent authority makes the determination of the number of vacancies and specifies the year of vacancies of earlier years under the said rule whereupon the appointing authority shall giving due regard to the recommendations of the Departmental Promotion Committee, make the appointments by promotion in the promotion quota vacancies relevant to the year specified under Rule 2.

4. When the appointing authority makes appointments by promotion under Rule 3, it shall specify the year in which such promotion shall be deemed to have been made.



5. Where any vacancy existed in the promotion quota in a year earlier than that in which an appointment by promotion was made on the recommendation of the Departmental Promotion Committee the appointing authorities shall modify the appointment order by specifying the year in which such promotion shall be deemed to have been made.

6. Where any appointment by promotion has been made under Rule 3 or where the appointing authority has specified the year of promotion under Rule 5, the person who has been so promoted shall not be entitled to claim any arrears of pay for any period during which he has not actually performed the duties of the post to which he has been promoted.”

Rule 2 contemplates a situation in which the service rules framed under the proviso to Article 309 for regulating recruitment and conditions of service provide for both direct recruitment and promotion. Where the promotional quota of any earlier year is not filled in the absence of a recommendation of the Departmental Promotion Committee (DPC), the appointing authority has to determine the vacancies which were required to be filled up by promotion. Thereupon, the DPC has to make its recommendation within three months of the determination by the competent authority specifying the number and the year of vacancies. The appointing authority is then required to make appointments by promotion in the promotion quota vacancies relevant to the year specified in Rule 2. While making an appointment under Rule 3 by promotion, the appointing authority has to specify the year in which the promotion shall be deemed to have been made. Consequently, where a vacancy existed in the promotion quota in an earlier year, prior to the year in which the appointment by promotion is made, the appointing



authority has to specify the year in which the promotion shall be deemed to have been made. However, in such a case, no arrears of pay for the period during which the appointed candidate has not worked are payable.

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26.2. Though vacancies arose in years 2008-2009, 2009-2010 and 2010-2011 on the post of LRI, selections were not held in time. These vacancies were to be filled up in the proportion of 80% for seniority-cum-merit and 20% by competitive examination. The selection process for these vacancies was not held year-wise and the vacancies for all the three years were clubbed together. Appointment orders for the 80% seniority-cum-merit vacancies were issued in 2012, while those for the 20% competitive exam vacancies were issued on 31-3-2014.

26.4. The right to seniority based on the year of vacancy flows statutorily from the provisions of the 1972 Rules and the 2001 Rules. These Rules provide for “deemed appointment”, a “deemed date of officiation/experience” and for promotions that relate back to the year of vacancy.

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35. Rule 9 of the 1960 Rules required the appointing authority to determine the actual number of vacancies occurring during the financial year, on 1st April every year. Under Rule 9, where a post is filled up by more than one method prescribed in the Rules or schedule, an apportionment of vacancies to every such method was to be done for maintaining the required proportion. The appointing



authority was also duty-bound to determine the year-wise vacancies of earlier years, which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in. Rule 9 in specific terms contemplated a year-wise determination of vacancies, allocation of vacancies to different methods of appointment and the determination of vacancies of earlier years which were not filled in the relevant year. However, Rule 9 did not, in express terms, provide for deemed seniority or a deemed date of promotion.

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44. It is evident from Part V of the 2001 Rules more particularly, the rules governing promotion contained in Rules 34 and 35 that the deeming fiction envisaged in Rule 35(6) applies to promotions made under the auspices of a DPC. In the case of such promotions, Rule 35 mandates that the Committee constituted under Rule 34 must consider the cases of persons who were eligible in the year to which the vacancy relates irrespective of the year in which the meeting of the Committee is held. The underlying rationale for Rule 35(6) is that on the determination of year-wise vacancies, rights are crystallised with reference to the year in which the vacancy has arisen. Consequently, the delay on the part of the DPC in convening its meeting should not result in a prejudice to those candidates who were eligible for promotion and ought to have been promoted but were not considered with reference to the year in which the vacancy arose. This principle in Rule 35(6) is in the nature of a deeming fiction. Undoubtedly, once a deeming fiction comes into being, full effect must be given to its ambit. Equally, a deeming fiction can apply to the extent to which and in a



situation where the law mandates that it be applied. In the present case, it is evident that the deeming fiction which applies in the context of a DPC having been convened beyond the year in which the promotional vacancy arose has no application to candidates who are recruited on the basis of a competitive examination for the grant of accelerated promotion. There is a fundamental reason why the deeming fiction cannot be extended to the situation implicated in Rule 284(ii). In order to appear in the competitive examination contemplated by Rule 284(ii), a candidate must fulfil the conditions of eligibility prescribed in Rule 286. Rule 286 stipulates that in-service Patwaris must have a minimum service of five years before they can appear at the competitive examination under Rule 284(ii). Conferment of a deemed seniority may result in a situation where a candidate secures seniority with effect from an anterior date on which he or she was neither borne on the cadre nor was qualified. Such a consequence would be impermissible, at least in the absence of an express statutory provision to that effect.

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in State of Bihar v. Akhoury Sachindra Nath [State of Bihar v. Akhoury Sachindra Nath, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and State of Uttaranchal v. Dinesh



Kumar Sharma [State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] . In Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , this Court revisited the precedents on the subject and observed : (SCC pp. 281-82, para 45)

“45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even



been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao [P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693 : (2014) 1 SCC (L&S) 690] .”

4.11. Hon’ble Apex Court in Para 49 & 51 of the judgment in the case of ***P. Sudhakar Rao*** has held as follows:-

“49. In a separate but concurring opinion, Aftab Alam, J. reiterated the position but referred to some more precedents on the subject. It was then said: (Reevan Singh case [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , SCC p. 286, para 63)

“63. To the decisions referred to on this point in the main judgment I may add just one more in Suraj Parkash Gupta v. State of J&K [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] . The decision relates to a dispute of seniority between direct recruits and promotees but in that case the Court considered the question of antedating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago. In SCC para 18 of the decision the Court framed one of the points arising for consideration in the case as follows: (SCC p. 578)

‘18. ... (4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the



direct recruit was not appointed by that date and was appointed long thereafter?’

This Court answered the question in the following terms: (Suraj Parkash Gupta case [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] , SCC p. 599, paras 80-81)

‘Point 4

Direct recruits cannot claim appointment from the date of vacancy in quota before their selection

80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In N.K. Chauhan v. State of Gujarat [(1977) 1 SCC 308 : 1977 SCC (L&S) 127] , Krishna Iyer, J. stated: (SCC p. 325, para 32)

Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when



direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in A. Janardhana v. Union of India [(1983) 3 SCC 601 : 1983 SCC (L&S) 467] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in A.N. Pathak v. Ministry of Defence [1987 Supp SCC 763 : 1988 SCC (L&S) 370 : (1988) 6 ATC 626] that slots cannot be kept reserved for direct recruits for retrospective appointments.’’

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51. From the various decisions referred to and from the facts of the case, it is clear that to pass the scrutiny of Article 14 of the Constitution, the seniority of the Supervisors should be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness.’’

4.12. It is also contended that the stand of the Petitioners that they were appointed as against the recruitment year 2011 and the Private Opp. Parties were promoted as against the recruitment year 2015 and accordingly they are to be placed above the Private Opp. Parties is also not legal and justified, as the term ‘recruitment year’ has not been defined under the 2011 Rules. As provided under Rule 11(1) of the Rules, direct recruits and promotee officers so appointed/promoted



in respect of a particular recruitment year are to be placed as provided under Sub Rule 1(i), (ii) & (iii). Since the Rule is silent with regard to fixation of inter se seniority in between the direct recruits and the promotees appointed/promoted as against different recruitment year. Rule 11 has no applicability to the issue involved.

4.13. However, as per the decision of the Hon'ble Apex Court in the case of ***K. Narayan & Ors. Vs. State of Karnataka & Ors.*** reported in 1994 Supp (1) SCC 44 and ***V. Siva Kumar & Ors. Vs. SECY., Ministry of Defence & Ors.*** reported in (2008) 2 SCC 99, the word 'Recruitment' only means 'to enlist'. Hon'ble Apex Court in Para 6 & 16 of the judgment in the case of ***K. Narayan & Ors. & V. Siva Kumar & Ors.*** has held as follows:-

“6. Article 309 of the Constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. ‘Recruitment’ according to the dictionary means ‘enlist’. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution.”

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16. In K. Narayanan v. State of Karnataka [1994 Supp (1) SCC 44 : 1994 SCC (L&S) 392 : (1994) 26 ATC 724] , SCC at para 6 it was noted as follows : (SCC p. 54)

“6. Article 309 of the Constitution empowers the appropriate legislature to frame rules to regulate recruitment to public services and the post. ‘Recruitment’ according to the dictionary means ‘enlist’. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution.”

4.14. It is contended that since the word ‘Recruitment’ has not been defined under the 2011 Rules and the Petitioners which is not disputed, were appointed vide notification dtd.04.03.2016 i.e. after the promotion of the Private Opp. Parties vide notification dtd.17.10.2015, in view of the decision in the case of **Jagdish Chandra Pattanaik & Ors** and followed in other decisions, so cited (supra), Private Opp. Parties being born in the cadre of OAS Group-A (JB) ahead of the Petitioners, they are eligible and entitled to be placed above the Petitioners, so held in the impugned order dtd.15.11.2021.

4.15. Since Petitioners were not borne in the cadre of OAS Group-A (JB) when the Private Opp. Parties joined in terms of notification



dtd.15.10.2015, by no stretch of imagination it can be held that Petitioners are senior to the Private Opp. Parties. It is contended that Rule 11 of 2011 Rules has only prescribed the fixation of inter se seniority of the direct recruitees and the promotees in respect of a particular recruitment year. Since Petitioners were appointed as against the recruitment year 2011 vide notification dtd.04.03.2016 and the Private Opp. Parties were appointed vide notification dtd.17.10.2015 against the recruitment year 2015, they have been rightly held to be placed above the Petitioners vide the impugned order dtd.15.11.2021.

4.16. It is also contended that even though Private Opp. Parties were given ad-hoc promotion vide notification dtd.17.10.2015 under Annexure-2 and regular promotion vide notification dtd.25.04.2017 under Annexure-4, but such regular promotion cannot be taken as the date of joining in the cadre as Private Opp. Parties basing on Annexure-2 notification joined in the cadre of OAS Group-A (JB) and such date of joining in the cadre is admittedly earlier than the joining of the Petitioner.

4.17. Since it is not disputed that the Private Opp. Parties were promoted and joined earlier than the Petitioners in the rank of OAS



Group-A (JB), even though their ad hoc promotion was regularized vide notification dtd.25.04.2017 under Annexure-4, but that cannot take away the very joining in the cadre ahead of the Petitioners. In support of the aforesaid submission reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Ajit Kumar Rath Vs. State of Odisha*** reported in (1999) 9 SCC 596. Hon'ble Apex Court in Para 16, 18 to 26 and 28 of the judgment has held as follows:-

“16. The only contention which was accepted by the Tribunal and on the basis of which it reviewed its earlier judgment was, that the appellant and Respondent 12 were not entitled to reckon their seniority with effect from the date on which they were promoted on ad hoc basis in 1972 as the amendment introduced in the rules in 1974 was not retrospective in nature and the unamended rule allowed seniority only with effect from the date of substantive appointment. The Tribunal found that since the appellant and Respondent 12 were given substantive appointment on the concurrence of the Orissa Public Service Commission in 1976 they cannot reckon their seniority from 1972 and, therefore, would be junior to the respondents. It was on this basis that the Tribunal reviewed its earlier judgment and did not follow the Constitution Bench decision of this Court in Direct Recruit Class II Engg. Officers' Assn. case [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348 : (1990) 2 SCR 900 : AIR 1990 SC 1607] . We do not agree with the reasoning of the Tribunal.

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18. The appellant and Respondent 12 were promoted to the post of Assistant Engineer on ad hoc basis by order dated 7-8-1972 for a period of six months or till the concurrence of the Orissa Public Service Commission to their appointments was available, whichever was earlier. Their case was referred to the Public Service Commission which gave its concurrence to their appointments and consequently by order dated 17-7-1976, they were appointed on regular basis.



19. In the same year, namely in 1972, the respondents were appointed as Assistant Engineers by direct recruitment. But the Tribunal while determining the inter se seniority of promotees and direct recruits, applied the unamended Rule 26 and held that since the appellant and Respondent 12 were appointed only on ad hoc basis in 1972 and theirs was not a substantive appointment, they, in view of Rule 26, would be junior to the respondents who were directly recruited as Assistant Engineers. The Tribunal held that they could reckon their seniority only from 1976 when they were substantively appointed as Assistant Engineers.

20. The manner and method of recruitment by promotion on the post of Assistant Engineer is contained in the rules. Rule 16(a) provides that the Chief Engineer of the department concerned would nominate officers from the cadre of Junior Engineers and Subordinate Engineering Service separately for appointment to the service in the vacancies to be filled up by promotion during the year. It is further provided in that rule that the basis of nomination by the Chief Engineer would be merit and suitability of the officer with due regard to seniority. According to the proviso to Rule 16(a), a Junior Engineer who has not completed two years of service, or Sub-Assistant Engineers, who are not diploma-holders and have not completed ten years of service, would not be considered for promotion. The second proviso says that if an examination was prescribed by the Government and such examination had not been passed by that person, he would not be considered for promotion.

21. The list of officers nominated by the Chief Engineer for promotion is required to be sent to the Government where the cases of individual officers are required to be scrutinised by the Departmental Committee on the basis of their service record and interview, if necessary. The Departmental Committee would then prepare a separate list of Junior Engineers and Sub-Assistant Engineers considered by the Committee to be fit for promotion. Thereafter, the Government would send such list to the Public Service Commission along with complete record of all the officers who are proposed to be promoted. The Commission would then scrutinise the list and prepare two lists; one for Junior Engineers and the other for Sub-Assistant Engineers, arranged in the order of their suitability for promotion and advise the Government accordingly. Under Rule 18, final selection of officers to be promoted is to be made by the Government after considering the recommendations made by the Commission.



22. It appears that on the basis of these rules, the appellant as also Respondent 12 were promoted to the post of Assistant Engineer on ad hoc basis subject to the concurrence of the Public Service Commission. This was done on 8-2-1972. On receipt of the concurrence from the Orissa Public Service Commission, a fresh notification was issued on 17-7-1976, by which the appellant as also Respondent 12 were appointed on regular basis as Assistant Engineers.

23. The Tribunal, while disposing of the case by its main judgment, had noticed the counter-affidavit filed by the State and it had observed that none of the opposite parties had come forward to say that the promotion of the appellant and Respondent 12 was not as per their eligibility and was purely fortuitous in nature. It further observed:

“The counter filed by the State clearly discloses that both the petitioners were promoted in the year 1972 to fill up the permanent vacancies and as in most cases, where it is required to take the advice of the Public Service Commission, they were given ad hoc promotion subject to concurrence by the Commission. There was admittedly delay in receipt of concurrence from the Commission but both the petitioners uninterruptedly continued in the promotional post till the concurrence by the Commission was received by the State Government.”

24. These facts clearly indicate that the promotion of the appellant was a regular, though provisional, promotion made against a permanent vacancy in accordance with the Service Rules. The Chief Engineer was the officer authorised under the rules to make the selection on the basis of merit. In the instant case, such selection was made by the Chief Engineer and pending concurrence of the Commission, the selected persons were appointed by the Government on ad hoc basis. It has already been indicated above that the Government is the final authority in making the selection of officers for promotion to the post of Assistant Engineer on the basis of the recommendations made by the Commission. There is no dispute that the appellant and Respondent 12 were appointed as Assistant Engineers by the Government in 1972 and four years later, that is to say, in 1976 they were appointed on a regular basis on the recommendation of the Orissa Public Service Commission.

25. It is thus clear that the appellant was promoted on a regular, though provisional, basis pending concurrence from the Orissa Public Service Commission. The promotion having been made in accordance with the rules, the entire period of ad hoc



service beginning from 1972 to 1976, when the appellant was appointed on a regular basis on the concurrence of the Commission, would have to be counted towards the seniority of the appellant vis-à-vis the contesting respondents. The Tribunal, in these circumstances, had rightly invoked the principles laid down by this Court in *Direct Recruit Class II Engg. Officers' Assn. case [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348 : (1990) 2 SCR 900 : AIR 1990 SC 1607]*. There was no scope to deviate from this rule as it has been clearly laid down by this Court in principles (A) and (B) set out therein as under: (SCC p. 745, para 47)

“47. (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

On these principles, the Tribunal had held, and in our opinion rightly, that the appellant and Respondent 12 were senior to the respondents.

26. In *O.P. Singla v. Union of India [(1984) 4 SCC 450 : 1984 SCC (L&S) 657]* even prior to the decision in *Direct Recruit Class II Engg. Officers' Assn. case [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348 : (1990) 2 SCR 900 : AIR 1990 SC 1607]* a Bench of 3 Judges had held that the seniority of direct recruits and promotees, if appointed under the rules, has to be determined on the basis of the dates on which the direct recruits were appointed and the dates from which the promotees had been officiating continuously, either in the temporary posts or against substantive vacancies. It may be pointed out that the Constitution Bench decision in *Direct Recruit Class II Engg. Officers' Assn. case [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348 : (1990) 2 SCR 900 : AIR 1990 SC 1607]* was considered by a three-Judge Bench of this Court in *State of W.B. v. Aghore Nath Dey [(1993) 3 SCC 371 : 1993 SCC (L&S) 783 : (1993) 24 ATC 932]* and principles (A) and (B) were explained as under: (SCC p. 382, para 22)

“22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases



which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed 'according to rules'. The corollary set out in conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority'. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority."

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28. The Constitution Bench decision was followed in Keshav Deo v. State of U.P. [(1999) 1 SCC 280 as also in L. Chandrakishore Singh v. State of Manipur [(1999) 8 SCC 287.]

4.18. Similarly, reliance was placed to another decision of the Hon'ble Apex Court in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors.*** reported in (1990) 2 SCC 715. Hon'ble Apex Court in Para 47(A) & 47(B) has held as follows:-

"A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.



(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in in the past uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

4.19. It is further contended that as per the Rules of Business of the Govt. of Odisha, only the view of the Law Department is to be followed and not of any other Department. Hence view expressed by the G.A. P.G. Department under Annexure-10, cannot be treated as a view as per the Rules of Business.

4.20. In support of the same, reliance was placed to the instruction issued by the Govt. at different point of time regarding the Rules of Business of the Govt.. As provided under Rule 14 of the Rules r.w. Article 166 of the Constitution of India, it is contended that if any other Department other than the Law Department proposed to issue any statutory rule, notification or order, the draft should be referred to the Law Department for its opinion and all Administrative Departments shall consult the Law Department with regard to construction of Statutes, Acts, Regulations and Statutory Rules, Orders & notifications.

4.21. It is further contended that during pendency of W.P.(C) Nos. 36470 & 36490 of 2021, when Govt.-Opp. Party No. 1 vide order



dtd.21.09.2022 under Annexure-8 sought for the status of the vigilance proceeding/criminal proceeding pending against the Officers continuing in the rank of OAS Group-A (JB) for consideration of their promotion to the rank of OAS Group-A (SB), the matter was assailed in W.P.(C) No. 25137 of 2022.

4.22. Even though initially this Court restrained the Opp. Parties from giving any promotion to the rank of OAS Group-A (SB), but such interim order was modified vide order dtd.29.09.2022, wherein permission was given to the State to extend the benefit of promotion to eligible Officers continuing in the cadre of OAS Group-A (JB) to the rank of OAS Group-A (SB). However, subject to the outcome of the writ petition and other writ petitions pending by that time with a further observation that all such promotees will not claim any equity and the same be indicated in the order of promotion. Relevant extract of order dtd.29.09.022 reads as follows:-

“11. Having heard learned counsel for the Parties and after going through the materials available on record as well as the submission made by the learned Advocate General that as against the available vacancies of 322 in OAS Group-A(SB) since the Petitioners of both the Groups i.e. Direct Recruits of 2011 and Promotees of 2015 will all be accommodated with extension of promotion, this Court in modification of its order dtd.24.09.2022 pass the following order:-



“(i) The promotion given from OAS Group-A(JB) to OAS-Group A(SB) during pendency of the matter will not confer any equity in favour of any of Promotees and that will be subject to the final outcome of all the writ Petitions to be heard analogously by this Court.”

“(ii) The aforesaid stipulation shall be indicated in the order of promotion also.””

4.23. It is also contended that seeking quashing of Para 6 & 7 of the G.A. Department Resolution dtd.09.09.2021, W.P.(C) No. 3113 of 2026 has been filed.

4.24. Making all these submissions learned Sr. Counsel appearing for the Private Opp. Parties contended that Private Opp. Parties have been rightly given the benefit of seniority over the Petitioners vide the impugned order dtd.15.11.2021 under Annexure-9 and it requires no interference.

4.25. Since the decision taken by the G.A. & P.G. Department vide notification dtd.09.09.2021 under Annexure-10, has been issued without due consultation of the Law Department, the said notification is contrary to the Rules of Business of the Govt. and could not have been issued.

5. To the submissions made by the learned Sr. Counsel appearing for the Petitioners, Mr. S.K. Das, learned counsel appearing for the



Petitioners made further submission contending inter alia that since Petitioners were all appointed as against the recruitment year 2011 and because of the delay involved, they were only appointed vide notification dtd.04.03.2016, in view of the decision in the case of **K. Meghachandra Singh** so followed in Annexure-10, they were rightly placed above the Private Opp. Parties in the final gradation list published on 08.03.2019 under Annexure-7. But without proper appreciation of the decision in the case of **K. Meghachandra Singh**, more particularly Para 39 of the said decision, since the impugned order has been passed directing for placement of the Private Opp. Parties above the Petitioners in the rank of OAS Group-A (JB), the same requires interference of this Court.

5.1. It is also contended that since by the time the final gradation list was published on 08.03.2019, the decision in the case of **N.R. Parmar** was governing the field, such fixation of seniority is protected by the subsequent decision of the Apex Court in the case of **K. Meghachandra Singh**, so delivered on 19.11.2019. It is accordingly reiterated that impugned order is liable for interference of this Court.

6. To the submission made by the learned counsel appearing for the Petitioners, learned Sr. Counsel appearing for the Private Opp. Parties



and learned counsel appearing for the Petitioner in connected W.P.(C) No. 9137 of 2022, contended that as per the Rules of Business, since view of the Law Department is to be given priority, the Law Department in the present case while giving its view in the relevant file on 25.09.2021, clearly opined that direct recruitees who have been placed above the promotee officers in the final gradation list dtd.08.03.2019, are not protected by the judgment in the case of **K. Meghachandra Singh**, as the gradation list was not prepared as per the judgment in the case of **N.R. Parmar**.

6.1. It is also contended that final gradation list published on 08.03.2019, cannot be taken as the gradation list attaining finality in the eye of law and protected as per the judgment in the case of **K. Meghachandra Singh**, as immediately after publication of the final gradation list on 08.03.2019, Private Opp. Parties challenged the same by filing W.P.(C) No. 19346 of 2019.

6.2. Therefore, it cannot be said that final gradation list published on 08.03.2019 even in terms of the decision in the case of **N.R. Parmar** is the final gradation list, which has attained finality and protected as per the decision in the case of **K. Meghachandra Singh**. It is accordingly contended that since Private Opp. Parties have joined in the cadre



earlier than the Petitioners, in view of the decision in the case of ***Jagdish Chandra Pattanaik & Ors, Arbind Jee, Pawan Pratap Singh & Ors., Vishan Gujrati & Ors. & P. Sudhakar Rao*** so cited (supra), Private Opp. Parties are liable to be placed above the Petitioners and the same has been rightly held by Opp. Party No. 1 with passing of the order dt.15.11.2021 under Annexure-9, which is the subject matter of challenge in the present writ petition.

7. Having heard learned counsel appearing for the Parties and considering the submission made, this Court finds that to fill up various posts coming under Odisha Civil Service, an advertisement was issued by the Commission on 17.11.2011 under Annexure-1. The advertisement was issued for recruitment against the posts coming under Odisha Civil Service for the recruitment year 2011 under Annexure-1.

7.1. However, Petitioners who participated in the selection process pursuant to such advertisement issued on 17.11.2011, were only appointed vide notification dt.04.03.2016 under Annexure-2 series. Prior to such appointment of the Petitioners as against the post of OAS Group-A (JB) vide notification dt.04.03.2016, Private Opp. Parties were already promoted to the rank of OAS Group-A (JB) vide



notification dtd.17.10.2015 under Annexure-3 as against the recruitment year 2015. Promotion of the Private Opp. Parties on ad-hoc basis was made regular vide notification dtd.25.04.2017 under Annexure-4.

7.2. It is found that after such appointment of the Petitioners vide notification dtd.04.03.2016 and of the Private Opp. Parties vide notification dtd.17.10.2015, in the final gradation list of OAS Group-A (JB) published on 08.03.2019, Petitioners were placed above the Private Opp. Parties. However, such placement of the Private Opp. Parties below the Petitioners was assailed by such promotees by filing W.P.(C) No. 19346 of 2019. This Court vide order dtd.29.07.2021 while disposing the writ petition, permitted the Private Opp. Parties to move Opp. Party No. 1 for consideration of their claim with regard to fixation of the inter-se seniority in between them and the Petitioners.

7.3. It is found that on consideration of such grievance raised by the Private Opp. Parties, Opp. Party No. 1 vide order dtd.15.11.2021 under Annexure-9 held the Private Opp. Parties entitled to be placed above the Petitioners in the gradation list of OAS Group-A (JB). The said decision of Opp. Party No. 1 passed on 15.11.2021 under Annexure-9, is under challenge in W.P.(C) No. 36490 of 2021. As



found from the impugned order, Opp. Party No. 1 took such a decision to place the Private Opp. Parties above the Petitioners, relying on the decision of the Hon'ble Apex Court in the case of ***K. Meghachandra Singh*** and the notification issued by the G.A. & P.G. Department on 09.09.2021 under Annexure-10.

7.4. It is not disputed that inter se seniority of the direct recruitees and promotees in the rank of OAS Group-A(JB) is governed under Rule 11 of the 2011 Rules. It is also found that the word 'recruitment year' is not defined under the 2011 Rules and Rule 11 only prescribes the fixation of inter-se seniority of the promotees and direct recruitees who were appointed and/or promoted as against a particular recruitment year. But in the case in hand Petitioners were appointed as direct recruitees as against the recruitment year 2011, and the Private Opp. Parties were promoted to the rank of OAS Group-A (JB) as against the recruitment year 2015. Therefore, it is the view of this Court that Rule 11 of the Rules since is silent so far as fixation of inter se seniority where such appointment and promotion is made as against different recruitment year, Rule 11 cannot be relied on, so far as the present dispute is concerned.



7.5. It is also found that Private Opp. Parties were promoted to the rank of OAS Group-A (JB) vide notification dtd.17.10.2015 under Annexure-3 and Petitioners were so appointed vide notification dtd.04.03.2016 under Annexure-2. It is also not disputed that the Private Opp. Parties joined in the cadre of OAS Group-A (JB), pursuant to their promotion vide notification dtd.17.10.2015, ahead of the Petitioners, who were only appointed vide notification dtd.04.03.2016.

7.6. Since the Private Opp. Parties admittedly have joined in the cadre of OAS Group-A (JB) ahead of the Petitioners, though they were regularly appointed vide notification dtd.25.04.2017 under Annexure-4, it is the view of this Court that they are required to be placed above the direct recruitees, in view of the decision of the Hon'ble Apex Court in the case of ***Jagdish Chandra Pattanaik & Ors, Arbind Jee, Pawan Pratap Singh & Ors., Vishan Gujrati & Ors. & P. Sudhakar Rao*** so cited (supra).

7.7. It is also the view of this Court that final gradation list published on 08.03.2019 since was challenged before this Court in W.P.(C) No. 19346 of 2019, it cannot be said that the final gradation list published on 08.03.2019 under Annexure-7 in terms of the decision in the case



of *N.R. Parmer*, had attained finality in the eye of law, by the time judgment in the case of *K. Meghachandra Singh* was delivered on 19.11.2019. Therefore, it is the view of this Court that, view expressed by the Hon'ble Apex Court in Para 39 of the decision in the case of *K. Meghachandra Singh*, is not applicable to the case of the Petitioners. It is however the view of this Court that ratio of the decision in the case of *N.R. Parmer* as well as *K. Meghachandra Singh*, is applicable even with regard to the dispute regarding fixation of seniority in between the direct recruitees and promotees in the State of Odisha.

7.8. In view of the aforesaid analysis, this Court is of the view that the impugned order has been rightly passed and it requires no interference. Accordingly, this Court is not inclined to interfere with the impugned order dtd.15.11.2021 under Annexure-9 and dismiss the writ petition in W.P.(C) No. 36490 of 2021.

7.9. In view of the dismissal of the writ petition in W.P.(C) No. 36490 of 2021, the writ petition in W.P.(C) No. 36470 of 2021 also stands dismissed. The writ petition in W.P.(C) Nos. 25137 of 2022 and W.P.(C) No. 9137 of 2022 stand disposed of with a direction on the Opp. Party No. 1, to take consequential action in terms of the interim



order passed on 29.09.2022 in W.P.(C) No. 25137 of 2022 and upholding of order dtd.15.11.2021, so passed by the Opp. Party No. 1. This Court however is not inclined to strike down Para 6 & 7 of G.A. Department Resolution dtd.09.09.2021 and dismiss W.P.(C) No. 3113 of 2026.

Photo copy of the order be placed in the connected case records.

(BIRAJA PRASANNA SATAPATHY)
Judge

Orissa High Court, Cuttack
Dated the 5th May, 2026/Sneha

Signature Not Verified

Digitally Signed
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Date: 05-May-2026 18:07:02

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