

A N. SURESH NATHAN & ORS., ETC. ETC.
v.
UNION OF INDIA & ORS. ETC. ETC.
(Civil Appeal No. 8468 of 2003)

B APRIL 22, 2010
[J.M. PANCHAL AND A.K. PATNAIK, JJ.]

C *Assistant Engineers (Including Deputy Director of Public Works Department) Group B(Technical) Recruitment Rules, 1965:*

D *rr. 5 and 11(1) – Promotion to post of Assistant Engineer under 50% quota for degree-holder category of Section Officers/Junior Engineers – HELD: Clause (1) of Rule 11 does not provide for a separate stream or channel of promotion exclusively for degree-holders, who have completed three years service – In view of r.5, post of Assistant Engineer being a selection post, merit is the sole criteria and seniority in the grade of Section Officers/Junior Engineers is not at all relevant – Therefore, all the Section Officers/Junior Engineers who are eligible for consideration under Rule 11(1) would be considered on the basis of comparative merit – Constitution of India, 1950 – Articles 16 and 141 – Code of Civil Procedure, 1908 – s.11.*

F *Constitution of India, 1950:*

G *Article 141 – Law declared by Supreme Court to be binding on all courts – Decision of Supreme Court in N. Suresh Nathan’s case – HELD: Was confined to the eligibility for consideration for promotion to 50% vacancies for the posts of Assistant Engineers/Public Works Department, Pondicherry meant for degree-holder or equivalent in the grade of Section Officer/Junior Engineer, and there was no law declared by the Court, to be binding under Article 141, on the*

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issue as to how Section Officers/Junior Engineers who become qualified for promotion to the post of Assistant Engineers would be considered for promotion – Nor would the said decision constitute res judicata on the issue – Precedents – Code of Civil Procedure, 1908 – s.11 – Assistant Engineers (Including Deputy Director of Public Works Department) Group B(Technical) Recruitment Rules, 1965 – rr. 5 and 11(1).

Promotion of appellant nos. 1 to 7 to the posts of Assistant Engineers, Public Works Department was challenged by respondent nos. 2 to 7, before the Central Administrative Tribunal. The Tribunal dismissed the application holding that in view of the decision of the Supreme Court in *N. Suresh Nathan's*¹ case, with regard to the procedure to be adopted for promotion of Section Officers/Junior Engineers, the applicants before it could not be allowed to raise the point once again nor was it open to the Tribunal to hold otherwise. But, the writ petition filed by the respondents challenging the order of the Tribunal was allowed by the High Court holding *inter alia* that the judgment of the Supreme Court in *N. Suresh Nathan* did not operate as *res judicata*. A review DPC was directed to be held.

Disposing of the appeals, the Court

HELD: 1. In *N. Suresh Nathan & Ors.**, this Court confined its decision to the qualification or eligibility for consideration for promotion to 50% vacancies for the post of Assistant Engineer meant for degree-holders or equivalent in the grade of Section Officer/Junior Engineer and held that only those Section Officers/Junior Engineers, who had completed three years' service after obtaining degree, were qualified or eligible for consideration to the 50% vacancies meant for the category of degree-holders or equivalent. In the said

1. (1991) 2 Suppl. SCR 423.

A judgment, this Court did not decide on how the Section
 Officers/Junior Engineers who had completed three
 years' service in the grade after the degree in Civil
 Engineering or equivalent and had the qualification or
 eligibility for consideration for promotion to the 50%
 B vacancies meant for the category of degree-holders
 would be considered for promotion. Therefore, in *N.*
Suresh Nathan & Ors., there was no law declared by this
 Court so as to be binding on the courts under Article 141
 of the Constitution, on the issue as to how Section
 C Officers/Junior Engineers, who become qualified or
 eligible for promotion to the post of Assistant Engineer
 would be considered for promotion; and, therefore, the
 decision in *N. Suresh Nathan* would also not constitute *res*
judicata on the said issue. [Para 13-15] [1027-F-H; 1028-
 A-C-E; 1029-A-B]
 D

**N. Suresh Nathan & Ors. v. Union of India & Ors. (1991)*
 2 Suppl. SCR 423 = (1992) 1 Suppl. SCC 584 - explained
 and distinguished.

E 2.1. Clause (1) of Rule 11 is only a provision laying
 down the qualification or eligibility for promotion to 50%
 of the posts of Assistant Engineers and the qualification
 or eligibility provided therein is either three years service
 in the grade of Section Officer/Junior Engineer after
 degree in Civil Engineering or equivalent, or six years
 F service in the grade of Section Officer/Junior Engineer
 with diploma in Civil Engineering. The provision also has
 a rider that if there are Section Officers/Junior Engineers.
 who have put in three years service after acquiring
 G degree or equivalent, available for consideration for
 vacancies, then they will be considered first for promotion
 and the turn for consideration for promotion of diploma-
 holders in Civil Engineering with six years service in the
 grade of Section Officer/Junior Engineer will come only
 H thereafter. Thus, the Rule itself provides that if for

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vacancies in the posts of Assistant Engineers, Section A
Officers/Junior Engineers possessing a recognized
degree in Civil Engineering or equivalent with three
years' service in the grade are not available, then Section
Officers/Junior Engineers holding diploma in Civil B
Engineering with six years' service in the grade would be
eligible for promotion. It cannot, therefore, be accepted
that Clause (1) of Rule 11 provides for a separate stream
or channel of promotion exclusively for degree-holders,
who have completed three years service. [para 23] [1033-
E-H; 1034-A-C] C

2.2. Rule 5 of the Recruitment Rules states that the
post of Assistant Engineer in the Public Works
Department is a selection post. The Recruitment Rules,
however, do not lay down that seniority-cum-merit would D
be the criteria for promotion to the selection post of
Assistant Engineer. The person, who is most meritorious,
is the most suitable person to be promoted to the
selection post. Thus, merit is the sole criteria for
promotion to the selection post and, therefore, question
of seniority in the grade of Section Officer/Junior E
Engineer is not at all relevant for promotion to the post
of Assistant Engineer. [Para 29-30] [1036-E-F-G; 1037-E-
F]

Dr. Jai Narain Misra v. State of Bihar & Ors. (1971) 1 F
SCC 30; and Guman Singh, etc. v. State of Rajasthan & Ors.
(1971) 2 SCC 452, relied on.

R. B. Desai & Anr. v. S. K. Khanolkar & Ors. (1999) 7
SCC 54; Chandravathi P.K. & Ors. v. C.K. Saji & Ors. 2004
(2) SCR 330 = (2004) 3 SCC 734; Shailendra Dania & Ors. G
v. S. P. Dubey & Ors. 2007 (5) SCR 190 = (2007) 5 SCC 535;
and M.B. Joshi v. Satish Kumar Pandey 1993 Supp.(2) SCC
419, referred to.

Suman Gupta v. State of J & K (1983) 4 SCC 339; H

- A *Munindra Kumar v. Rajiv Govil* (1991) 3 SCC 368; *Satya Narain Shukla v. U.O.I.* (2006) 9 SCC 69; *P.U. Joshi v. Accountant General* (2003) 2 SCC 632; *U.O.I. v. Pushpa Rani* (2008) 9 SCC 242; *Inderjeet Khurana v. State of Haryana* (2007) 3 SCC 102; *U.O.I. v. A.K. Narula* (2007) 11 SCC 10;
 B and *A. K. Raghumani Singh & Ors. v. Gopal Chandra Nath & Ors.* (2000) 2) SCR 943 = (2000) 4 SCC 30, cited.

2.3. In the absence of any indication in the Recruitment Rules that seniority in the grade of Section Officer/Junior Engineer will be counted for the purpose of promotion to the post of Assistant Engineer, consideration of all Section Officers/Junior Engineers under Clause (1) of Rule 11 of the Recruitment Rules who are eligible for such consideration has to be done on the basis of assessment of the comparative merit of the eligible candidates and the most suitable or meritorious candidate has to be selected for the post of Assistant Engineer. Such a method of selection will be consistent with Rule 5 of the Recruitment Rules and Article 16 of the Constitution which guarantees to all citizens equality of opportunity in matters of public employment. [Para 34] [1040-F-H; 1041-A]

2.4. In the considered opinion of the Court, therefore, the practice adopted by the Government on the advice of the UPSC of counting the service of the eligible candidates from the date of acquisition of the degree in Civil Engineering by them and the judgment and order of the High Court directing that the entire service of eligible candidates, both prior and after acquisition of the degree of Civil Engineering by them, would be counted for the purpose of promotion to the post of Assistant Engineer under Clause (1) of Rule 11 of the Recruitment Rules are contrary to the fundamental right guaranteed under Article 16 of the Constitution and r. 5 of the Recruitment Rules which are made under Article 309 of the Constitution. [Para 34] [1041-B-C]

3. The judgment of the High Court is set aside and the Government of Pondicherry is directed to consider, in accordance with merit, the cases of all Section Officers/Junior Engineers, who have completed three years' service in the grade of Section Officers/Junior Engineers. It is made clear that the promotions to the posts of Assistant Engineers already made pursuant to the judgment and order of the High Court will not be disturbed until the exercise is carried out for promotion in accordance with merit as directed in this judgment and on completion of such exercise, formal orders of promotion to the vacancies in the posts of Assistant Engineers which arose during the pendency of the cases before this Court are passed in case of those who are selected for promotion and, after such exercise only, those who are not selected for promotion may be reverted to the post of Section Officer/Junior Engineer. [para 35] [1041-D-G]

Case Law Reference:

(1991) 2 Suppl. SCR 423	distinguished	para 7	E
(1999) 7 SCC 54	referred to	para 8	
(2000) 2) SCR 943	cited	para 8	F
2004 (2) SCR 330	referred to	para 18	
2007 (5) SCR 190	referred to	para 19	
(1971) 1 SCC 30	relied on	para 29	
(1971) 2 SCC 452	relied on	para 30	G
(1983) 4 SCC 339	cited	para 31	
(1991) 3 SCC 368	cited	para 31	
(2006) 9 SCC 69	cited	para 31	H
(2003) 2 SCC 632	cited	para 31	

- A (2008) 9 SCC 242 cited para 31
 (2007) 3 SCC 102 cited para 31
 (2007) 11 SCC 10 cited para 31
 1993 Supp. (2) SCC 419 referred to para 32
- B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8468 of 2003.

C From the Judgment & Order dated 23.6.2003 of the High Court of Judicature at Madras in Writ Petition No. 11236 of 2000.

WITH

C.A. Nos. 698 of 2004, 3649-3650 of 2010 & 8470 of 2003.

- D J.L. Gupta, L.N. Rao, M.S. Ganesh, V.G. Kanagaraj, Rakesh Dwivedi, K.V. Viswanathan, Satya Mitra Garg, S. Thananjayan, G. Balaji (for M/s. Mahalakshmi Balaji & Co.) S.R. Setia, V.G. Pragasam, S.J. Aristotle, P. Ramasubramanian, M.A. Chinnasamy, K. Krishna Kumar, Neha Sharma, S. Krishna, Preetika Dwivedi, Mukti Chaudhary, Amit Singh,
- E Abhishek Kaushik, P.B. Subramaian for the appearing parties.

The Judgment of the Court was delivered by

A.K. PATNAIK, J.1. Leave granted in S.L.P. (C) Nos. 7174-7175 of 2009.

2. These are appeals against the judgment and order dated 23.06.2003 passed by a Division Bench of the Madras High Court in Writ Petition No.11236 of 2000.

- G 3. The relevant facts briefly are that the Government of Pondicherry, Planning & Development Department, made the Assistant Engineers (including Deputy Director of Public Works Department) Group 'B' (Technical) Recruitment Rules, 1965 [for short 'the Recruitment Rules'] for the post of Assistant Engineers for the Public Works Department initially by a
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Notification dated 31.01.1966. The Recruitment Rules were amended by a Notification dated 08.08.1986 and as per the amended Recruitment Rules the post of Assistant Engineer in the Public Works Department, Pondicherry, was a selection post and appointment to the 20% of the posts of Assistant Engineer was to be by direct recruitment and to the 80% of the posts by promotion. 50% of the promotion quota was to be filled up by Section Officers (now Junior Engineers) possessing a recognized degree in Civil Engineering or equivalent with three years service in the grade, failing which Section Officers holding diploma in Civil Engineering with six years service in the grade and the remaining 50% of the promotion quota was to be filled up by Section Officers (Junior Engineers) possessing a recognized diploma in Civil Engineering with six years service in the grade.

4. On 24.09.1968, the Chief Secretary, Government of Pondicherry, wrote to the Secretary, Union Public Service Commission (for short 'the UPSC') that there were Section Officers with diploma qualification who have acquired degree in Civil Engineering or equivalent and have putting in several years in service and having become qualified for consideration for 50% quota of the post of Assistant Engineers to be filled up by promotion and questions have arisen whether the service rendered by such Section Officers before and after possessing the degree or equivalent can be taken into account for consideration for promotion under the degree holders quota and whether their cases may be considered under the diploma holders quota as well for promotion to the post of Assistant Engineer. In the letter dated 24.09.1968, the Chief Secretary sought the advice of the Commission regarding the correct procedure to be followed in such cases. The UPSC gave its advice in its letter dated 06.12.1968 that the services of Section Officers, who qualify as graduates while in service, should be counted from the date they passed the degree or equivalent examination or from the date they started drawing Rs.225/- p.m. in the prescribed scale, whichever was earlier and Section

- A Officers may continue to be considered in the diploma holders quota in case it is advantageous to them and the Government followed this advice of the UPSC.

- B 5. In 1989, however, some Junior Engineers, who were formerly Section Officers working in the Public Works and Local Administration Department of Government of Pondicherry, filed O.A. No. 552 of 1989 in the Central Administrative Tribunal, Madras Bench, (for short 'the Tribunal') and in its judgment and order dated 09.01.1990 the Tribunal held that when the Recruitment Rules require three years service in grade, the C Section Officers (now Junior Engineers) who ceased to be mere diploma holders having acquired the degree qualification have to be regarded as having total experience put in the grade of Section Officers before and after acquiring the degree qualification and there was nothing in the Recruitment Rules to warrant the exclusion of a part of the experience acquired by D such Junior Engineers while functioning in the grade of Section Officers (Junior Engineers). The Tribunal accordingly directed that the cases of the applicants in the O.A. be considered for promotion to the post of Assistant Engineers on par with other E degree holders Junior Engineers taking due note of their total length of service rendered in the grade of Junior Engineers and such a consideration should be along side other Junior Engineers, who might have acquired the necessary degree qualification earlier than the applicants while holding the post F of Junior Engineers.

- G 6. The judgment and order dated 09.01.1990 of the Tribunal was challenged by N. Suresh Nathan and Others before this Court in Civil Appeal No. 4542 of 1991 and this Court interpreting Rule 11 of the Recruitment Rules held in the judgment reported in 1992 Supp. (1) SCC 584 that the period of three years' service in the grade required for degree-holders as qualification for promotion in the category of degree-holders must mean three years' service in the grade as a degree-holder and, therefore, that period of three years can commence only H

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from the date of obtaining the degree and not earlier and this interpretation of Rule 11 was in conformity with the past practice followed consistently by the Government and that the Tribunal was not justified in taking the contrary view and accordingly allowed the appeal. Review Petition No.50 of 1993 was filed against the judgment and order dated 22.11.1991 of this Court in the aforesaid case but the same was dismissed on 31.01.1993.

7. Thereafter, appellant Nos. 1 to 7 were promoted to the post of Assistant Engineer on 08.03.1997. Respondent Nos. 2 to 7 challenged the promotion of the appellant Nos. 1 to 7 before the Tribunal in O.A. No. 359 of 1997 contending *inter alia* that this Court in its judgment in *N. Suresh Nathan & Ors. v. Union of India & Ors.* (supra) has only held that three years' service required for eligibility for the promotion quota reserved for the category of degree-holders or equivalent should be considered from the date of acquiring the degree or equivalent, but has not decided the question of seniority as between degree-holders or equivalent and diploma-holders in the grade. The Government of Pondicherry in its reply filed in O. A. No.359 of 1997 before the Tribunal contended that the Departmental Promotion Committee met on 29.09.1996 and keeping in view the direction of this Court in the judgment in *N. Suresh Nathan & Ors. v. Union of India & Ors.* (supra) selected the Section Officers/Junior Engineers to the post of Assistant Engineers by preparing two lists, one list for considering promotions to the post of Assistant Engineer for the degree-holders quota and another list for considering promotion to the post of Assistant Engineers for the diploma-holders quota. The Government of Pondicherry further clarified in its reply that in the first list those who had joined as Section Officers/Junior Engineers with degree in Civil Engineering were placed above the Section Officers/Junior Engineers who had joined the service with diploma in Civil Engineering but had subsequently acquired degree in Civil Engineering and in the second list, the Section Officers/Junior Engineers who had joined with diploma were

- A placed in order of seniority counted from the date of the joining in the grade. By the judgment and order dated 27.08.1999, the Tribunal dismissed O.A. No.359 of 1997 after holding that this Court has already taken a specific view in N. Suresh Nathan's case (supra) with regard to the procedure to be adopted for promotion of Junior Engineers in the Public Works Department of Pondicherry construing the recruitment rules and the applicants in O.A. should not be allowed to raise the point once again and that the judgment of this Court in N. Suresh Nathan's case was binding on the Tribunal and it was not open for the Tribunal to hold otherwise insofar as the interpretation of the recruitment rules for the post of Assistant Engineer in the Public Works Department in Pondicherry is concerned.

8. Aggrieved, respondents Nos.3, 4, 5 and 6 filed Writ Petition No.11236 of 2000 before the Madras High Court against the judgment and order dated 27.08.1999 of the Tribunal in O.A. No.359 of 1997 and by the impugned judgment and order, a Division Bench of the Madras High Court held *inter alia* that in *N. Suresh Nathan & Ors. v. Union of India & Ors.* (supra) this Court only decided the question of eligibility for promotion to the posts of Assistant Engineer meant for the category of degree-holders or equivalent, but did not decide the question of seniority of Section Officers/Junior Engineers, who had acquired a degree in Civil Engineering or equivalent after joining as Section Officers/Junior Engineers and, therefore, the judgment of this Court in *N. Suresh Nathan & Ors.* (supra) did not operate as *res judicata*. The Division Bench of the Madras High Court, relying on the decisions of this Court in *R. B. Desai & Anr. v. S. K. Khanolkar & Ors.* [(1999) 7 SCC 54] and *A. K. Raghumani Singh & Ors. v. Gopal Chandra Nath & Ors.* [(2000) 4 SCC 30], further held in the impugned judgment and order that the entire service of a person concerned even before acquiring the degree in Civil Engineering or equivalent have to be counted for the purpose of seniority and promotion and directed that a review DPC should be held to consider the question of promotion of the

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petitioners before the High Court vis-à-vis respondents 2 to 8
and other eligible persons, who had become eligible by the date
of sitting of the DPC in 1996 and accordingly allowed the Writ
Petition. A

9. Mr. Jawahar Lal Gupta, Mr. L. Nageswar Rao and Mr.
M.N. Rao, learned senior counsel appearing for the appellants,
submitted that the view taken by the High Court in the impugned
judgment and order is the same as has been taken by the
Tribunal in its order dated 09.01.1990 in the earlier O.A. No.552
of 1989 and as the order dated 09.01.1990 of the Tribunal in
O.A. No.552 of 1989 has been set aside by this Court in N.
Suresh Nathan & Ors. (supra), the impugned judgment and
order of the High Court cannot be sustained. They referred to
the earlier order dated 09.01.1990 of the Tribunal in O.A.
No.552 of 1989 to show that the Tribunal had directed the
authorities to consider the applicants in the O.A. for promotion
to the post of Assistant Engineer at par with other degree-
holder Junior Engineers taking due note of their total length of
service rendered in the grade of Junior Engineer, both before
and after acquiring the degree of Civil Engineering or
equivalent, and submitted that this Court set aside this direction
of the Tribunal in the judgment in N. Suresh Nathan & Ors.
(supra). They further submitted that once this Court set aside
the order dated 09.01.1990 of the Tribunal in O.A. No.552 of
1989 on the ground that the order of the Tribunal was not in
conformity with Rule 11 of the Recruitment Rules and the
practice followed by the Department, the decision of this Court
on the issue constitutes *res judicata* and the interpretation of
Rule 11 of the Recruitment Rules by this Court was a
declaration of law binding on the High Court under Article 141
of the Constitution. B
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10. Mr. M.S. Ganesh, learned senior counsel appearing
for the Government of Pondicherry, reiterated these contentions
of the learned counsel for the appellants.

11. Mr. Rakesh Dwivedi and Mr. K.V. Viswanathan, H

- A learned counsel appearing for respondents No. 2 to 19, in their reply, contended that the High Court has rightly held in the impugned judgment and order that in *N. Suresh Nathan & Ors* (supra), this Court only decided the question of eligibility of Section Officers or Junior Engineers for promotion to the post of Assistant Engineers meant for the category of degree-holders and not the method in which the eligible candidates will be considered for promotion.

12. Para 5 of the judgment in *N. Suresh Nathan & Ors* (supra) which contains the ratio decided by this Court is quoted herein below:

- “5. The Recruitment Rules for the post of Assistant Engineers in the PWD (Annexure C) are at pages 57 to 59 of the paper book. Rule 7 lays down the qualifications for direct recruitment from the two sources, namely, degree-holders and diploma-holders with three years’ professional experience. In other words, a degree is equated to diploma with three years’ professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein – one is of degree-holder Junior Engineers with three years’ service in the grade and the other is of diploma-holder Junior Engineers with six years’ service in the grade, the provision being for 50 per cent from each category. This matches with Rule 7 wherein a degree is equated with diploma with three years’ professional experience. In the first category meant for degree-holders, it is also provided that if degree-holders with three years’ service in the grade are not available in sufficient number, then diploma-holders with six years’ service in the grade may be considered in the category of degree-holders also for the 50 per cent vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years’ service in the grade required for degree-holders according to Rule 11

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as the qualification for promotion in that category must mean three years' service in the grade as a degree-holder and, therefore, that period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree-holder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants degree-holders that the rules must be construed to mean that the three years' service in the grade of a degree-holder for the purpose of Rule 11 is three years from the date of obtaining the degree is quite tenable and commends to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the department."

13. On a close reading of the aforesaid para 5 of the judgment of this Court in N. Suresh Nathan & Ors. (supra), we find that this Court confined its decision to the qualification or eligibility for consideration for promotion to 50% vacancies for the post of Assistant Engineer meant for degree-holders or equivalent in the grade of Section Officers/Junior Engineers and held that only those Sections Officers or Junior Engineers, who had completed three years' service after obtaining degree, were qualified or eligible for consideration to the 50% vacancies meant for the category of degree-holders or equivalent. In the judgment in N. Suresh Nathan & Ors. (supra), this Court did not decide on how the Section Officers/Junior Engineers who had completed three years' service in the grade after the degree in Civil Engineering or equivalent and had the qualification or eligibility for consideration for promotion to the 50% vacancies

A meant for the category of degree-holders would be considered for promotion.

B 14. Article 141 of the Constitution states that the law declared by this Court shall be binding on all the courts within the territory of India. In *N. Suresh Nathan & Ors.* (supra) this Court has set aside the order of the Tribunal dated 09.01.1990 in O.A. No.552 of 1989 after declaring that Section Officers/Junior Engineers having three years' service in the grade after they acquired degree in Civil Engineering or equivalent will become qualified or eligible for promotion to the 50% vacancies meant for the category of degree-holders or equivalent. In *N. Suresh Nathan & Ors.* (supra) this Court has not declared any law on how these Sections Officers/Junior Engineers, who had become qualified or eligible for promotion to the post of Assistant Engineer under the category of degree-holders or equivalent, would be considered for such promotion. There was, therefore, no law declared by this Court on how Section Officers or Junior Engineers, who become qualified or eligible for promotion to the post of Assistant Engineer would be considered for promotion, which was binding on the courts under Article 141 of the Constitution.

F 15. Section 11 of the Code of Civil Procedure Code (for short 'CPC') titled '*Res judicata*' states that no court shall try any issue which was directly or substantially in issue between the same parties and which has been heard and finally decided by a competent court. Thus, unless an issue directly and substantially raised in the former case is heard and decided by the competent court, the principle of *res judicata* will not be attracted. In *N. Suresh Nathan & Ors.* (supra) this Court, while setting aside the order dated 09.01.1990 in O.A. No.552 of 1989, has decided that those Section Officers/Junior Engineers who complete three years' service after acquiring the degree in Civil Engineering or equivalent are qualified or eligible for consideration for promotion to the 50% quota of vacancies for the post of Assistant Engineer under the degree-holders

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category but has not decided how such Section Officers/Junior Engineers who are qualified or eligible will be considered for such promotion under the degree-holders category. The decision of this Court in N. Suresh Nathan & Ors. (supra), therefore, did not constitute *res judicata* on the issue regarding the manner in which Section Officers/Junior Engineers who were qualified or eligible for consideration for promotion to the post of Assistant Engineer would be considered for promotion.

16. The High Court was, therefore, right in taking the view that in N. Suresh Nathan & Ors. (supra), this Court was concerned only with the question of eligibility but was not concerned whether the past services rendered by the diploma-holders would be counted for the purpose of seniority and that neither Article 141 of the Constitution nor the principle of *res judicata* was a bar for Tribunal or the High Court to consider whether past services of Section Officers/Junior Engineers who were diploma-holders before they acquired degree in Civil Engineering or equivalent could be counted for the purpose of promotion for the 50% vacancies for the post of Assistant Engineers meant for the category of degree-holders or equivalent.

17. Learned counsel for the appellants next submitted that Rule 11 of the Recruitment Rules provides for two streams or channels of promotion to the post of Assistant Engineer, Public Works Department, one stream or channel is for Sections Officers or Junior Engineers possessing a recognized degree in Civil Engineering or equivalent and the other for Section Officers/Junior Engineers holding diploma in Civil Engineering. They submitted that it is for this reason that the UPSC in its letter dated 06.12.1968 advised the Government that the services of Section Officers/Junior Engineers, who qualify as graduates while in service, should be counted from the date they passed the degree or equivalent while considering them for promotion for the channel or stream of promotion meant for Section Officers or Junior Engineers having degree in Civil

- A Engineering or equivalent and the Government of Pondicherry has acted on this advice of the UPSC.

B 18. Mr. Nageswar Rao cited the decision in *Chandravathi P. K. & Ors. v. C.K. Saji & Ors.* [(2004) 3 SCC 734] in which the question for consideration was whether in terms of the scheme of the Kerala Engineering Service (General Branch) Rules, diploma-holders were entitled to claim any weightage for the service rendered by them prior to their acquisition of degree qualification in the matter of promotion or transfer to higher posts when specific quota is fixed for graduates and diploma-holders in the matter of promotion and this Court, on a conjoint reading of Rules 4 and 5 of the Kerala Engineering Service (General Branch) Rules, held that a diploma-holder Assistant Engineer who subsequently acquired a degree qualification would be eligible for promotion as Assistant Executive Engineer, only in the event he fulfils the conditions precedent therefor and not otherwise and his case could be considered only after the cases of promotion of those who had been holding such degree qualification have been considered.

E 19. Mr. Ganesh adopted these arguments of learned counsel for the appellants and cited the decision in *Shailendra Dania & Ors. v. S. P. Dubey & Ors.* [(2007) 5 SCC 535] wherein this Court interpreting the rules for promotion to the post of Assistant Engineers in CPWD, which has adopted by the DDA, found that 25% of the total posts of Assistant Engineers were to be filled up by promotion from the category of graduate Junior Engineers and 25% of the total posts were to be filled up by diploma-holders with eight years' service and held that a separate quota was, thus, prescribed for promotion of Junior Engineers for degree and diploma-holders to the higher post of Assistant Engineer. He submitted that in the aforesaid case of *Shailendra Dania & Ors.* (supra), this Court emphatically held that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer in the limited quota of degree-holder Junior

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Engineers in the service experience of a degree-holder and cannot be equated with the service rendered as a diploma-holder. Relying on this decision, learned counsel for the Government of Pondicherry submitted that the prior service experience of a Section Officer or Junior Engineer while he was diploma-holder and when he had not acquired the degree in Civil Engineering or equivalent cannot be counted for the purpose of consideration for the 50% quota of promotion to the post of Assistant Engineer meant for degree-holders.

20. Learned counsel appearing for the respondents 2 to 19, on the other hand, submitted that Rule 11 of the Recruitment Rules does not provide for two streams or channels of promotion as contended by learned counsel for the appellants and it only lays down the qualification or eligibility of three years' service after degree in Civil Engineering or equivalent as a qualification or eligibility and once a diploma-holder acquires a degree in Civil Engineering or equivalent, his entire length of service both prior to acquisition of such degree in Civil Engineering or equivalent and after acquisition of such degree or equivalent has to be taken into consideration at the time of consideration for promotion to the post of Assistant Engineer meant for degree-holders.

21. Mr. Viswanathan cited this Court's decision in *R. B. Desai & Anr. v. S. K. Khanolkar & Ors.* [(1999) 7 SCC 54] for proposition that if at the time of consideration for promotion, the candidates concerned have acquired eligibility, then unless a rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. He submitted that in the present case, the rules for promotion from the post of Section Officer or Junior Engineer to Assistant Engineer did not give any such priority to the candidates acquiring earlier eligibility. He submitted that *Chandravaihi P. K. & Ors. v. C.K. Saji & Ors.* (supra) was a case where the rules, namely, the Kerala Engineering Service (General Branch) Rules, were different from the Recruitment

- A Rules in the present case and the Kerala Engineering Service (General Branch) Rules clearly provided for two different streams or channels of promotion for the posts of Assistant Engineer, i.e. for diploma-holders and degree-holders. He submitted that in *Shailendra Dania & Ors. v. S. P. Dubey & Ors.* (supra) cited by the learned counsel for the appellants and the Government of Pondicherry, the question for consideration was whether a diploma-holder Junior Engineer, who obtained a degree while in service, became eligible for promotion to the post of Assistant Engineer on completion of three years of service after he obtained the Engineering degree or on completion of three years of service prior to obtaining the degree in Engineering and while answering this question, this Court held that a diploma-holder Junior Engineer became eligible for promotion to the post of Assistant Engineer on completion of three years' service after he obtained the Engineering degree. He submitted that the decision of this Court in *Shailendra Dania & Ors.* (supra), therefore, is not an authority for proposition that the service of diploma-holders put in prior to the acquisition of the degree or equivalent by him will have to be ignored while considering them for promotion to the post of Assistant Engineer meant for degree holders.

22. Rule 11 of the Recruitment Rules in the present case is quoted herein below :-

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|---|--|---|
| F | "11. In case of recruitment by promotion/deputation/Transfer grades from which promotion/deputation/transfer to be made. | Promotion
1. Section Officer
possessing a recognized degree in Civil Engineering or Equivalent with 3 Years service in the grade failing which Section Officers holding diploma in Civil Engineering with 6 years service in the grade – 50%. |
| G | | |
| H | | |

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2. Section Officers A
possessing a recognized
diploma in Civil
Engineering with 6 years
service in the grade –
50%” B

23. A plain reading of Rule 11 of the Recruitment Rules quoted above would make it clear that for the 50% quota for the posts of Assistant Engineer mentioned under Clause 1 of Rule 11, Section Officers (now Junior Engineers) possessing recognized degree in Civil Engineering or equivalent with three years' service in the grade, failing which Section Officers possessing diploma in Civil Engineering with six years' service in the grade would be eligible for consideration for promotion. All that the Rule provides is that if for vacancy in the post of Assistant Engineer, Section Officers possessing recognized degree in Civil Engineering or equivalent with three years' service in the grade are not available, Section Officers holding diploma in Civil Engineering with six years service in the grade could be considered for promotion. Clause 1 of Rule 11 is, therefore, only a provision laying down the qualification or eligibility for promotion to 50% of the posts of Assistant Engineer and the qualification or eligibility provided therein is either three years service in the grade of Section Officers or Junior Engineers after degree in Civil Engineering or equivalent or six years service in the grade of Section Officers or Junior Engineers with diploma in Civil Engineering. This provision also has a rider that if there are Section Officers/Junior Engineers, who have put in three years service after acquiring degree or equivalent, available for consideration for vacancies, then they will be considered first for promotion and the turn for consideration for promotion of diploma-holders in Civil Engineering with six years service in the grade of Section Officers/Junior Engineers will come only thereafter. Thus, the Rule itself provides that if for vacancies in the post of Assistant Engineer, Section Officers possessing a recognized degree in

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- A Civil Engineering or equivalent with three years' service in the grade are not available, then Section Officers holding diploma in Civil Engineering with six years' service in the grade would be eligible for promotion. We, therefore, cannot accept the submission of learned counsel for the appellants and the
- B Government of Pondicherry that Clause 1 of Rule 11 provides for a separate stream or channel of promotion exclusively for degree-holders, who have completed three years service and we are of the opinion that learned counsel for the respondents 2 to 19 are right in the submission that Clause 1 of Rule 11
- C only lays down the qualification or eligibility for consideration for promotion to 50% of the posts of Assistant Engineers.

24. In *Chandravathi P. K. & Ors. v. C.K. Saji & Ors.* (supra), cited by Mr. L. Nageshwara Rao, on the other hand, this Court held that under Rules 4 and 5 of the Kerala

D Engineering Service (General Branch) Rules there were separate avenues of promotion for the degree-holders and the diploma holders. This will be clear from the observations of the Court in para 30 of the judgment in *Chandravathi P. K., & Ors. v. C.K. Saji & Ors.* (supra), quoted herein below:

E "A bare perusal of Rules 4 and 5 of the Kerala Engineering Service (General Branch) Rules would clearly go to show that the avenues for promotion for the degree-holders and the diploma holders were separate." [(2004) 3 SCC

F 734 at 748]

25. In *Shailendra Dania & Ors. v. S. P. Dubey & Ors.* (Supra) cited by learned counsel Mr. Ganesh, this Court similarly found that there were two different channels or streams of promotion for degree-holders and diploma holders to the

G post of Assistant Engineer in the relevant rules. This will be clear from the findings in para 44 of the judgment quoted herein below:

H "..... There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are

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entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. [(2007) 5 SCC 533 at 560)]”

26. In the present case, on the other hand, Clause 1 of Rule 11 of the Recruitment Rules does not provide for “separate avenues” or “watertight compartments” for promotion to the post of Assistant Engineers for degree-holders and diploma-holders. As we have seen Clause 1 Rule 11 of the Recruitment Rules only lays down the qualification or eligibility for consideration for promotion to the post of Assistant Engineers earmarked for the 50% quota. The two decisions of this Court in *Chandravathi P. K. & Ors. v. C.K. Saji & Ors.* (supra) and *Shailendra Dania & Ors. v. S. P. Dubey & Ors.* (Supra) are, therefore, of no assistance to the appellants.

27. In *R. B. Desai & Anr. v. S. K. Khanolkar & Ors.* (supra) cited by Mr. Viswanathan, this Court found that the amended rules of 1988 pertaining to the promotion to the cadre of Assistant Conservator of Forests provided that Range Forest Officers with five years regular service in the grade and possessing diploma of Forest Rangers’ Training from Forest Rangers College in India or equivalent were eligible for promotion to the post of Assistant Conservator of Forests and the Court held in para 9:

“..... that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage

A and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same. [(1999) 7 SCC 54 at 58]

B 28. In the passage of the judgment of this Court in *R.B. Desai & Anr. V. S. K. Khanolkar & Ors.* (supra) quoted above, it is laid down that in service law, seniority has its own weightage and unless and until the rules specifically exclude this seniority, it is not open to the authorities to ignore the same. In the aforesaid case though the post of ACF was mentioned to be a selection post in the amended rules of 1988, the question
C whether for a selection post seniority would have weightage or merit would have weightage while considering the eligible candidates for promotion was not raised or decided and the only question which was raised before this Court was whether
D ranking assigned in the eligibility list or the ranking assigned to the seniority list should be given weightage and this Court held that between the candidates who are eligible, ranking in seniority must be given weightage irrespective of the date for which the candidate becomes eligible.

E 29. In the present case, we find that Rule 5 of the Recruitment Rules states that the post of Assistant Engineer in the Public Works Department, Pondicherry, is a selection post. The Recruitment Rules, however, do not lay down that seniority-cum-merit would be the criteria for promotion to the
F selection post of Assistant Engineer. In *Dr. Jai Narain Misra v. State of Bihar & Ors.* [(1971) 1 SCC 30] a three-Judge Bench of this Court held that the question of seniority was not relevant for promotion to the selection post in the language of the judgment of this Court in *Dr. Jai Narain Misra v. State of Bihar & Ors.* (supra):

G "It was not disputed before us that the post of Director of Agriculture is a selection post. Therefore, the question of seniority was not relevant in making the selection. It is for the State Government to select such officer as it considers as most suitable. In this view we think the High Court was

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not justified in going into the question of seniority nor will we be justified in going into that question.” A

Thus, the question of seniority in the grade of Section Officers or Junior Engineers is not at all relevant for promotion to the post of Assistant Engineer in the Public Works Department, Government of Pondicherry. The practice adopted by the Government of Pondicherry in consultation with the UPSC of counting the services of Section Officers or Junior Engineers, who qualified as graduates while in service from the date they passed the degree or equivalent examination and placing them in order of seniority accordingly for the purpose of consideration for promotion to the post of Assistant Engineer under Clause 1 of Rule 11 of the Recruitment Rules is contrary to Rule 5 of the Recruitment Rules. Similarly, the direction of the High Court in the impugned judgment and order to count the entire service of a person concerned even before acquiring degree in Civil Engineering for the purpose of seniority and promotion to the post of Assistant Engineer under Clause 1 of Rule 11 of the Recruitment Rules is contrary to Rule 5 of the Recruitment Rules. B C D

30. The person, who is most meritorious, is the most suitable person to be promoted for the selection post. Merit, in other words, is the sole criteria for promotion to the selection post. In *Guman Singh, etc. v. State of Rajasthan & Ors.* [1971 (2) SCC 452] a five-Judge Bench of this Court speaking through Vaidialingam, J. explained how merit of candidates for promotion is to be assessed in para 35 at page 408 of the judgment in the following words: E F

“..... No doubt the term ‘merit’ is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters or factors such as his G H

- A punctuality in work, quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service. We are only indicating some of the broad aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in the annual confidential reports of an officer, if carefully and properly noted, will also give a very broad and general indication regarding the merit of an officer.”
- B
- C Where, therefore, there are large number of eligible candidates available for consideration for promotion to a selection post, the Government can issue executive instructions consistent with the principle of merit on the method to be followed for considering such eligible candidates for promotion to the selection post.
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31. Learned counsel for the appellants however submitted that when the Recruitment Rules are silent on the procedure to be adopted by the Government in selecting the candidates for promotion, the Government is the best authority to decide what procedure to be adopted in such promotion and the Court will not interfere with the procedure so adopted unless it was unconstitutional, arbitrary, unreasonable or otherwise illegal. In support of this submission, Mr. L. Nageswar Rao cited the decisions of this Court in *Suman Gupta v. State of J & K* [(1983) 4 SCC 339], *Munindra Kumar v. Rajiv Govil* [(1991) 3 SCC 368], *Satya Narain Shukla v. U.O.I.* [(2006) 9 SCC 69], *P.U. Joshi v. Accountant General* [(2003) 2 SCC 632], *U.O.I. v. Pushpa Rani* [(2008) 9 SCC 242], *Inderjeet Khurana v. State of Haryana* [(2007) 3 SCC 102] and *U.O.I. v. A.K. Narula* [(2007) 11 SCC 10]. Learned counsel for the appellants submitted that in the present case the Government of Pondicherry in consultation with the UPSC has adopted the procedure since 1968 that the services of Section Officers/ Junior Engineers who qualified as graduates while in service
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should be counted from the date they passed the degree or equivalent examination for the promotion under clause 1 Rule 11 of the Recruitment Rules and this procedure is not unconstitutional, arbitrary, unreasonable or illegal and, therefore, the High Court by the impugned judgment and order should not have interfered with this procedure and should not have directed that the entire service of a person concerned even before acquiring the degree in civil engineering or equivalent has to be counted for the purpose of seniority and promotion to the post of Assistant Engineer under clause 1 of Rule 11 of the Recruitment Rules. Learned counsel appearing for the Government of Pondicherry adopted this contention of the learned counsel of the appellants.

32. Learned counsel for the respondents No.2 to 19, in their reply, submitted that the Government cannot adopt a procedure for selection by way of promotion to the post of Assistant Engineer contrary to the Recruitment Rules. They submitted that the Recruitment Rules do not provide that for promotion under clause 1 of Rule 11, the services of Section Officers/Junior Engineers who qualified as graduates while in service, would be counted from the date they passed the degree or equivalent examination and their services prior to the date of passing the degree or equivalent examination would be ignored. They further submitted that the Government also cannot adopt the procedure of selection which violates the fundamental right guaranteed under Article 16 of the Constitution of India to equality of opportunity in matters of public employment. They submitted that once a candidate became eligible or qualified to be considered for promotion to the post of Assistant Engineer under clause 1 of Rule 11 of the Recruitment Rules, he has a right to be considered for such promotion and such consideration cannot be denied by laying down a procedure which ignores his seniority in the grade of Section Officer/Junior Engineer. They relied on the decision of this Court in *M.B. Joshi v. Satish Kumar Pandey* [1993 Supp.(2) SCC 419].

A 33. In *M.B. Joshi v. Satish Kumar Pandey* (supra), the
 State Government had been applying the principle of counting
 the seniority of Graduate Sub-Engineers from the date of their
 continuous officiation irrespective of the date on which such
 diploma-holder Sub-Engineer acquired the degree of
 B graduation in Engineering and on the basis of such seniority,
 the Departmental Promotion Committee was considering
 Graduate Sub-Engineers for promotion to the post of Assistant
 Engineers. When this method adopted by the State
 Government was challenged by some of the Sub-Engineers
 C before the Madhya Pradesh Administrative Tribunal, Jabalpur,
 the Tribunal held that the seniority of such Sub-Engineers must
 be determined from the date of acquiring the degree of
 graduation in Engineering and this Court held that the Tribunal
 was wrong in determining the seniority from the date of
 D acquiring degree of Engineering and it ought to have been
 determined on the basis of length of service on the post of Sub-
 Engineer and the Government was right in doing so and there
 was no infirmity in the orders passed by the Government. In this
 case also, the question did not arise whether for selection post
 seniority would have weightage or merit would have weightage
 E while considering the eligible candidates for promotion.

34. As we have seen, Rule 5 of the Recruitment Rules in
 the present case states that the post of Assistant Engineer is
 a selection post and the Recruitment Rules nowhere provide
 F that seniority-cum-merit would be the criteria for promotion. In
 the absence of any indication in the Recruitment Rules that
 seniority in the grade of Section Officers / Junior Engineers will
 be counted for the purpose of promotions to the post of
 Assistant Engineer, consideration of all Section Officers / Junior
 G Engineers under Clause 1 of Rule 11 of the Recruitment Rules
 who are eligible for such consideration has to be done on the
 basis of assessment of the comparative merit of the eligible
 candidates and the most suitable or meritorious candidate has
 to be selected for the post of Assistant Engineer. Such a
 H method of selection will be consistent with Rule 5 of the

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Recruitment Rules and Article 16 of the Constitution which A
guarantees to all citizens equality of opportunity in matters of
public employment. In our considered opinion, therefore, the
practice adopted by the Government of Pondicherry on the
advice of the UPSC of counting the service of the eligible B
candidates from the date of acquisition of the degree in Civil
Engineering by them and the impugned judgment and order of
the High Court directing that the entire service of eligible
candidates, both prior and after acquisition of the degree of
Civil Engineering by them, would be counted for the purpose C
of promotion to the post of Assistant Engineer under Clause 1
of Rule 11 of the Recruitment Rules are contrary to the rules
made under Article 309 of the Constitution and the fundamental
right guaranteed under Article 16 of the Constitution.

35. For the aforesaid reasons, we set aside the impugned D
judgment of the High Court and direct the Government of
Pondicherry to consider the cases of all Section Officers or
Junior Engineers, who have completed three years' service in
the grade of Section Officers or Junior Engineers, for promotion
to the vacancies in the post of Assistant Engineer, Public Works E
Department, Government of Pondicherry, in accordance with
their merit. We make it clear that the promotions to the post of
Assistant Engineers already made pursuant to the judgment
and order of the High Court will not be disturbed until the
exercise is carried out for promotion in accordance with merit F
as directed in this judgment and on completion of such
exercise, formal orders of promotion to the vacancies in the
posts of Assistant Engineer which arose during the pendency
of the cases before this Court are passed in case of those who
are selected for promotion and after such exercise only those G
who are not selected for promotion may be reverted to the post
of Section Officer or Junior Engineer.

The appeals are disposed of accordingly with no order as
to costs.

R.P.

Appeals disposed of. H