

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C)477(AP)2015

1. Shri Phurpa Thingley
S/o Sri Namgey Tsering
Village Shyaro
PO – Lhou - 790104
District – Tawang(A.P.)
2. Shri Ngamnei Suyang
S/o Sri Gankham Suyang
Village Lapnan
PO – Khonsa - 786630
District – Tirap(A.P.)
3. Shri Nokchu Sumnyan
S/o Late Lampang Sumnyan
Village Hunkan
PO – Dadam - 786630
District – Tirap(A.P.)
4. Shri Tashi Tsedar
S/o Late Leki Sangay
Village Shyaro
PO – Lhou - 790104
District – Tawang(A.P.)
5. Shri Gopak Riba
S/o Late Rijo Riba
Village Daring
PO – Lhou - 791101
District – West Siang(A.P.)
Mobile - 9436224851

.....*Petitioners*

-Vs-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar – 791111.
2. The Director General of Police, Government of Arunachal Pradesh, Itanagar – 791111.
3. The Assistant Inspector General of Police, Government of Arunachal Pradesh, Itanagar – 791111.

4. Shri Yorko Sanchung(Tamang), C/o Commandant, 2nd Bn BHQ, Aalo, P.O. Aalo, District – West Siang, (AP).

.....respondents

By Advocate:

For the petitioners: Mr. Subu Koyang

For the respondents: Mr. Duge Soki, Addl. Senior Government Advocate

Mr. R. B. Yadav

Mr. T. Tatin

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 31.08.2018

Date of Judgment : 31.10.2018

JUDGMENT & ORDER

Heard Mr. Subu Koyang, learned counsel for the petitioners.

Also heard Mr. Duge Soki, learned Addl. Senior Government Advocate appearing on behalf of the State Respondents No. 1 to 3; and Mr. R. B. Yadav, learned counsel appearing on behalf of the private respondent No. 4.

Perused records.

2. The petitioners, by preferring this petition under Article 226 of the Constitution of India, have challenged the legality and validity of the impugned order, dated 10.06.2014, whereby the private respondent No. 4, who is purportedly junior to the petitioners, has been placed above the seniors in the seniority/gradation list of the Head Constables and the impugned order, dated 08.09.2015, whereby the said private respondent No. 4 has been promoted to the post of Sub-Inspector of Police from the rank of Head Constable.

3. The petitioners have contended and Mr. Koyang, learned counsel, appearing on their behalf submitted that the petitioners along with the private respondent No. 4 were appointed as Constable in the Arunachal Armed Police Battalion (For short 'AAP Bn.') in 1988. The first seniority list of Constables of the AAP Bn. was prepared on the basis of marks obtained in the interview for

appointment of Constable vide No. P-076/Pt, dated 28.10.1992. The seniority of the petitioners and the respondent No. 4 in the said seniority list was as under:

1. Sri Phurpa Thinley at serial No. 14.
2. Sri Ngamnei Suyang at serial No. 22.
3. Sri Nokchu Sumnyan at serial No. 30.
4. Sri Yorke Tamang at serial No. 36 (private respondent No. 4).
5. Sri Gopak Riba at serial No. 45.
6. Sri Tashi Tsedar at serial No. 63.

4. Mr. Koyang further submitted that from the above seniority list, it is seen that the respondent No. 4 was ranked below the petitioners No. 1, 2 & 3. It is the case of the petitioners that the petitioners No. 1, 2, 3, 4 & 5 were promoted from Constable to the rank of Lance Naik on the basis of performance in the Junior Cadre Course Examination conducted at the Battalion Headquarter, Chimpu, whereas the respondent No. 4 was not promoted from the rank of Constable to the next rank of Lance Naik at the time, when the petitioners were promoted. It is also the case of the petitioners that they had attended the Cadre Course of Lance Naik for promotion to the rank of Naik at Chimpu w.e.f. 01.01.1993 to 11.04.1993 and they were promoted to the rank of Naik after conducting the aforesaid examination. As per the seniority list of Lance Naiks, prepared by the Department concerned, Mr. Koyang submitted, the petitioners were placed at serial No. 3(Sri Phurpa Thinley), serial No. 5(Sri Tashi Tsedar), serial No. 6(Sri Nokchu Sumnyan), serial No. 47(Sri Gopak Riba) and serial No. 52(Sri Ngamnei Suyang), whereas the name of the private respondent No. 4 was not found in the seniority list of Lance Naiks. Thereafter, the petitioners were promoted from Naik to the rank of Head Constable vide order, dated 17.04.1997. But the respondent No. 4 was not promoted to the rank of Head Constable at the time the petitioners were promoted. The position in the seniority list of the petitioners, in order of promotion from Naik to Head Constable were Sri Ngamnei Suyang(serial No. 47), Sri Phurpa Thinley (serial No. 49), Sri Nokchu Sumnyan(serial No. 50), Sri Tashi Tsedar(serial No. 51) and Sri Gopak Riba(serial No. 62). The petitioners further contended that as per the seniority list of Naiks, the petitioners, namely Sri Ngamnei Suyang, Sri Phurpa Thinley, Sri Nokchu Sumnyan, Sri Tashi Tsedar and Sri Gopak Riba were

placed at serial No. 53, 55, 56, 57 and 60, respectively. In the said list too, the name of the respondent No. 4 did not find place.

5. According to the petitioners, as per the provisional seniority list of the Head Constables, dated 30.01.2008, the petitioners viz. Sri Ngamnei Suyang, Sri Phurpa Thinley, Sri Nokchu Sumnyan, Sri Tashi Tsedar and Sri Gopak Riba, were placed at serial Nos. 72, 74, 75, 76 and 79 respectively, whereas the name of respondent No. 4 Sri Yoroko Samchung (Tamang) was placed at serial No. 82. The petitioners have contended that the respondent No. 4 was junior to the petitioners in the rank of Head Constable. However, as per another seniority list of Head Constables, dated 09.04.2008, the petitioners Sri Ngamnei Suyang, Sri Phurpa Thinley, Sri Nokchu Sumnyan, Sri Tashi Tsedar, and Sri Gopak Riba were placed at serial No. 68, 70, 71, 72 and 75 respectively, and the name of the private Respondent No. 4, Sri Yoroko Samchung (Tamang) was placed at serial No. 78. As per the said seniority list, the respondent No. 4 was junior to the petitioners. Again vide Memorandum No. PHQ/PER-47/2011, dated 17.04.2013, another seniority list of Head Constables of AAP Bn. was issued by the respondent authorities for the third time and the names of the petitioners viz. Sri Ngamnei Suyang, Sri Phurpa Thinley, Sri Nokchu Sumnyan, Sri Tashi Tsedar, and Sri Gopak Riba were placed at serial nos. 29, 31, 32, 33 and 36 respectively, whereas the name of the respondent No. 4 Sri Yoroko Samchung (Tamang) found place at serial No. 39. The respondent No. 4 was, therefore, junior to the petitioners as per the aforesaid seniority list of Head Constables and as such, the respondent No.4 was junior to the petitioners all along their entire service period in different ranks, namely in Constable, Lance Naik, Naik and Head Constable.

6. The petitioners have also contended that a seniority list of Head Constables of AAP Bn. was prepared and published for the fourth time, without due advance notice, placing the private respondent No. 4 above the petitioners without assigning any reason vide order, dated 10.06.2014. According to the petitioners, the respondent authority has arbitrarily passed the order for re-fixing of seniority position of the Respondent No. 4 at serial No. 23 without assigning any reason. When the private respondent No. 4 was junior to the petitioners all along their service career, it was unfair, unjust and illegal to place the said respondent No. 4 above the seniors i.e. the petitioners in the seniority

list of the Head Constables and as such, the impugned order, vide No. PHQ/PER-47/2011, dated 10.06.2014, is liable to be set aside and quashed for the interest of justice.

7. Being aggrieved by the impugned seniority list of the Head Constables of AAP Bn., the petitioners No. 3 & 5 submitted representations before the respondent authorities for placing their names above the respondent No. 4 in the seniority list of the Head Constables on the ground of they being senior in service, but the representations of the petitioners are still lying pending disposal before the respondent authorities. Without redressing their grievances reflected in the representations first, the respondent No.4 was again promoted from the rank of Head Constable to the rank of Sub-Inspector of Police superseding the petitioners and others who were seniors vide order, dated 08.09.2015, in a most arbitrary, unfair and illegal manner, for which the aforesaid order is also liable to be set aside and quashed.

8. By filing the affidavit-in-opposition, the State respondents have contended and Mr. D. Soki, learned Addl. Senior Govt. Advocate, submitted that the seniority position of the respondent No.4 was at Sl. No.36, whereas the petitioner No.1, petitioner No.2 and petitioner No.5 were at Sl. Nos. 14, 22, and 45 in the final seniority/gradation list of the Constables of AAP Bn., while the seniority position of petitioner No.4 was placed at Sl. No.97 and not at Sl. No. 63 as claimed in the writ petition. It is, however, admitted that the seniority position of the private respondent No.4 was below the petitioners No.1, 2 and 3 in the rank of Constable. It is averred by the State respondents that aggrieved by the promotion order, dated 19.05.1993, the respondent No.4 had submitted a representation claiming for his promotion to the rank of Lance Naik with retrospective effect on the ground that due to non- maintenance of up-to-date service record at the Bn. Headquarters, his promotion to the rank of Lance Naik was not considered by the DPC. According to the State respondents, while the respondent No.4 was posted in West Kameng District as Constable, he was placed under suspension vide order, dated 05.12.1989, which was revoked w.e.f. 08.08.1990 and after conclusion of the departmental inquiry, he was awarded the penalty of withholding of 2(two) service increments without cumulative effect and the suspension period was treated as spent on duty, vide order, dated 10.09.1990. Mr. Soki submitted that the said order, dated

10.09.1990 was inadvertently not entered in the service sheet of the respondent No.4 and due to non-recording of the same in the service record, the DPC was wrongly informed that the departmental enquiry was still pending against him and, therefore, on this count alone promotion of the respondent No.4 from the rank of Constable to Lance Naik was not considered and also could not be allowed to undergo the Cadre course of Naik which was held in 1994. According to Mr. Soki, the merit position of the respondent No. 4 in the merit list of the cadre course for promotion to the rank of Lance Naik was at Sl. No.33. Accordingly, he was promoted to the rank of Lance Naik with retrospective effect from 19.05.1993, vide order, dated 18.9.1997, with further order allowing him to appear for promotion test from the rank of Lance Naik to Naik, held after the order, dated 18.09.1997. Mr. Soki, learned Addl. Senior Govt. Advocate, further submitted that no further test for promotion from the rank of Lance Naik to Naik was held after 1994 and therefore, the respondent No.4 was deprived of his promotion to the rank of Naik, for which reason, the respondent No.4 was considered for promotion to the rank of Head Constable w.e.f. 30.12.2003 by the DPC, held on 30.12.2003. The respondent No.4, in the meanwhile, submitted representation requesting his promotion with retrospective effect from 17.04.1997 i.e. from the date on which his immediate juniors were promoted to the rank of Head Constable. The representation of the respondent No.4 was considered in view of the factual position aforementioned and accordingly a review DPC was held on 30.12.2003 and the review DPC, after due consideration of all the relevant facts, recommended his promotion to the rank of Head Constable with retrospective effect from 30.12.2003.

9. According to Mr. Soki, the respondent No.4 being not promoted with retrospective effect from 17.04.1997, i.e. from the date on which his junior Shri Shamin Ahmed was promoted to the rank of Head Constable, he submitted a representation to the competent authority, which was duly considered and finally, he was promoted to the rank of Head Constable with retrospective effect from 17.04.1997, vide order, dated 06.02.2014. Mr. Soki submitted that consequent upon promotion of the respondent No. 4 with retrospective effect from 17.04.1997, he was given all consequential benefits including seniority in service and his seniority position was fixed at Serial No.23 in the

seniority/gradation list of the Head Constables of AAP Bn., which was duly published by circulation vide order No.PHQ/PER-47/2011, dated 10.6.2014. However, the representation submitted by the petitioner No.3 against the seniority list of the Head Constables of APP Bn. circulated vide order No. PHQ/PER-47/2011, dated 10.6.2014, was considered and rejected being found devoid of merit vide office memorandum, dated 21.01.2016.

10. Mr. R. B. Yadav, learned counsel appearing on behalf of the private respondent No.4 and the respondent No.4 by filing an affidavit-in-opposition contended that the petitioners as well as the respondent No.4 were appointed as Constable in the 1st AAP Bn. on 29.04.1988. The seniority positions were given as per the merit list in the basic training course and the respondent No.4 was placed at Sl.No.36 of the seniority list of the Constables. Mr. Yadav further submitted that the respondent No.4 and the petitioners were promoted to the rank of L/NK on 19.05.1993. It was also submitted that the respondent No.4 was once placed under suspension on 05.12.1989 for service misconduct and accordingly, a departmental disciplinary proceeding was drawn up against him, wherein, he was inflicted with the punishment of forfeiture of 2(two) service increments without cumulative effect and further stipulated that the period of suspension was to be treated as spent on duty vide order No.P-214/DA, dated 08.09.1990, which was, of course, rectified by a Corrigendum, dated 10.09.1990. According to Mr. Yadav, learned counsel for the respondent No.4, unfortunately the department omitted to enter the result of the departmental proceeding in his Service Book which led to his non-consideration by the DPC for promotion to the rank of L/NK along with his batch mates, though he had already cleared the cadre course of L/NK and in the mean time, the currency period of penalty had expired. The respondent No. 4 being aggrieved of not getting opportunity to appear in the selection test for promotion to the rank of Naik, he submitted a representation to the respondent No.2/ the Director General of Police, PHQ, Itanagar. The competent authority, after due examination of his service records, passed an order, dated 18.09.1997, promoting him to the rank of L/NK with retrospective effect from 19.05.1993. After making his promotion, a revised gradation list of L/NK was published wherein the respondent No.4 was placed at Sl. No. 33. Mr. Yadav, learned

counsel for the respondent No.4 further submitted that though the respondent No. 4 had passed the cadre course of L/NK, he was deprived of the opportunity to appear in the Naik test, as he was never called to appear for the Naik test. Being aggrieved, he approached the DIGP, PHQ, through a representation, dated 16.10.2003, praying for his promotion to the rank of Head Constable, which was duly considered by the authority and constituted a DPC which met on 30.12.2003 and on the basis of the recommendation of the said DPC, the respondent No.4 was promoted to the rank of Head Constable w.e.f. 30.12.2003. Accordingly to Mr. Yadav there were many juniors to the respondent No. 4, who were already given promotion to the rank of Head Constable w.e.f. 17.04.1997 and as such, the respondent No.4 being again not satisfied with the effective date of his promotion to the rank of Head Constable raised his grievances before the competent authority, through his representation, dated 17.06.2004, for reconsideration of his case for promotion at par with his juniors. Mr. Yadav further submitted that after consideration of his representation, dated 17.06.2004, the competent authority constituted a review DPC, which was held on 23.11.2005 and after due consideration, recommended the name of the private respondent No. 4 for promotion with retrospective effect from 17.04.1997, that is, the date on which his immediate junior Shri Cheri Monpa was promoted vide order, dated 27.12.2005. Thus, inspite of his case being considered by the concerned competent authority and given promotion w.e.f. 17.04.1997, his seniority position was inadvertently placed below his juniors at serial No. 82 in the Provisional Seniority list of the Head Constables, which was later on finalized, but, the respondent No. 4 had remained in darkness of it and he never expected such type of wrongly computed seniority in the seniority/gradation list, as he was in *bona fide* belief, after getting promotion with retrospective date i.e. the date when his juniors were given promotion, that everything will be rectified subsequently. As soon as the respondent No. 4 came to know about such infirmity in the seniority list, he immediately approached the respondent No. 2/ the Director General of Police, by preferring an appeal, dated 19.08.2013, against the departmental miscalculation of his seniority position. However, after due consideration of his appeal, the respondent No. 3 issued the Memorandum, dated 06.02.2014, fixing his seniority position in between Chakra Bhadur Chetry and Wangroh

Khetey (who had become Sub-Inspectors of Police in the mean time) and in that regard, an order, dated 10.06.2014, was passed and thereby the seniority position of the respondent No. 4 was re-fixed at Serial No. 23 of the said seniority list in between H/C C.B. Chetry and H/C Minaram Baruah as stated above.

11. Mr. R. B. Yadav, learned counsel for the respondent No.4 further submitted that the respondent No. 4 was given promotion to the rank of Sub-Inspector vide Order, dated 08.09.2015, in pursuance to this Court's order, dated 27.08.2015, passed in WP(C)No.430(AP)/2014 and on being recommended by the DPC, held on 24.11.2014, Mr. Jadav submitted that his case for promotion was considered by the DPC held on 24.11.2014, although, his juniors had already been given promotion to the rank of Sub-Inspector of Police w.e.f. 30.04.2008 and as such, he was also entitled for promotion to the rank of Sub-Inspector of Police at par with his juniors w.e.f. 30.04.2008. In that context, the respondent No. 4 had submitted his claim through a representation, which was duly forwarded to the respondent No. 2 by the Commandant, 2nd AAP Bn. BHQ, Aalo, vide forwarding letter, dated 30.11.2015.

12. Mr. Yadav, learned counsel appearing for the private respondent No. 4, further submitted that there were 7(seven) police personnel, namely Shri Orem Tagi, Kento Rina, Shri Lingdung Komi, Shri Taring Padung, Shri Marto Bam, Shri Godak Taja and Shri Loky Brah, who were juniors, out of them, 3(three) L/NKs namely, Shri Taring Padung, Shri Loke Brah and Shri Godak Taja were given promotion to the rank of Sub-Inspector of Police in the year 2008 vide order, dated 30.11.2009. Subsequently, Shri Oren Tagi, Kento Rina and Loky Brah were further promoted to the post of Inspector of Police in the year 2012 and Shri Taring Padung, Marto Bam and Godak Taja were given promotion to the rank of Inspector of Police in the year 2013 vide order, dated 19.07.2013 and vide order, dated 26.11.2014, Shri Lindung Komi was given promotion to the post of Inspector of Police. Mr. Yadav also submitted that the seniority position of the respondent No. 4 was misplaced due to mistake of the dealing clerk as the final Departmental Inquiry Order was not entered in his Service Book, which was later on entered by the authority and thereafter, his seniority was correctly placed in the seniority list of the Head Constables at Serial No. 23 as he was given promotion with retrospective effect from 17.04.1997, that is, from the

date of his juniors' promotion. Therefore, according to Mr. Yadav, there is no infirmity in the aforesaid impugned seniority list. That apart, the petitioners have not challenged the promotion of the respondent No. 4 to the rank of Head Constable and as such, at this stage, they cannot challenge the seniority of the respondent No. 4.

13. The petitioners in response to the affidavit-in-opposition of the private respondent No. 4 have filed the affidavit-in-reply, wherein they have reiterated the averments made in the instant writ petition. However, the relevant paragraphs are produced herein below for effective adjudication of the matter at hand:

"3. That the petitioners beg to submit that they were appointed as Constable along with respondent No. 4 in Arunachal Armed Police Battalion in 1998. The first seniority list of Constable of Arunachal Armed Police Battalion (Hereinafter referred to as AAP Bn in short) was prepared on the basis of marks obtained in the interview for appointment of Constable vide No. P-076/Pt dated 28.10.1992. The seniority position of the petitioners and respondent No. 4 in the seniority list of Constable is as furnished below:-

- 1. Sri Phurpa Thinley in serial No. 14.*
- 2. Sri Ngamnei Suyang in serial No. 22.*
- 3. Sri Nokchu Sumnyan in serial No. 30.*
- 4. Sri Yorko Tamang in serial No. 36.*
- 5. Sri Gopak Riba in serial No. 45.*
- 6. Sri Tashi Tsedar in serial No. 63.*

The respondent No. 4 is below the petitioner No. 1, 2 & 3 in the seniority list of Constable of AAP Bn, which has been admitted by the respondent No. 4 in para-5 of his Affidavit-in-Opposition. Thus, the respondent No. 4 was junior to the petitioners No. 1, 2 & 3 from the beginning of his service.

4. That the petitioners beg to submit that the petitioner No. 1, 3, 4 & 5 were promoted from constable to Lance Naik on the basis of junior cadre course examination conducted at Battalion Headquarter, Chimpu, which was conducted from 12.04.1993 to 21.05.1993 vide order No. P -193/92 dated 19.05.1993. The respondent No. 4 has admitted in para-6 of the Affidavit-in-opposition that he was not promoted from constable to Lance Naik at the time of giving promotion to the petitioners as he was placed under suspension and departmental proceeding initiated against him.

5. That the petitioners beg to submit that the petitioners had attended cadre course of Lance Naik for promotion to the post of Naik at Chimpu w.e.f 01.01.1993 to 11.04.1993. They were promoted to the rank of Naik after conducting an examination. A seniority list of Lance Naik was prepared on the basis of marks obtained in the cadre course of Lance Naik vide No. BHQ/IST BN/229/SEN/LNK/PT-96 dated 01.11.1996. The seniority position of the petitioners in the seniority list of Lance Naik is as furnished below:-

- 1. Sri Phurpa Thinley in serial No. 3.*
- 2. Sri Tashi Tsedar in serial No. 5.*
- 3. Sri Nokchu Sumnyan in serial No. 6.*
- 4. Sri Gopak Riba in serial No. 47.*
- 5. Sri Ngamnei Suyang in serial No. 52.*

The respondent No. 4 is not found in the seniority list of Lance Naik as he was under suspension and departmental proceeding was going on against him at the time of promotion of the petitioners from constable to Lance Naik.

6. That the petitioners beg to submit that a seniority list of Naik was prepared on the basis of marks obtained in the examination conducted for promotion to the post of Naik vide order No. BHQ/1STBN/ESTT-230/SEN/NK/96 dated 05.11.2007. The seniority position of the petitioners in the seniority list of Naik is as furnished below:-

1. Sri Ngamnei Suyang in serial No. 53.
2. Sri Phurpa Thinley in serial No. 55.
3. Sri Nokchu Sumnyan in serial No. 56.
4. Sri Tashi Tsedar in serial No. 57.
5. Sri Gopak Riba in serial No. 60.

The respondent No. 4 is not found in the seniority list of Naik.

7. That the petitioners reiterate that they were promoted from Naik to the rank of Head Constable vide order No. PHQ/ESTT-A/9/97 dated 17.04.1997. But, the respondent No. 4 was not promoted to the rank of Head constable at the time of giving promotion to the petitioners. The serial number of petitioners in the promotion order are as furnished below:-

1. Sri Ngamnei Suyang in serial No. 47.
2. Sri Phurpa Thinley in serial No. 49.
3. Sri Nokchu Sumnyan in serial No. 50.
4. Sri Tashi Tsedar in serial No. 51.
5. Sri Gopak Riba in serial No. 62.

The petitioners were unaware of the order vide No. PHQ/ESTT-A/62/2003 dated 27.12.2005 and Memorandum No. PHQ/Estt-A/9/97/Vol dated 06.02.2014 till respondent No. 4 has filed Affidavit-in-opposition annexing the aforesaid documents. The respondent No. 4 has been arbitrarily promoted to the post of Constable with retrospective effect and placed him in serial No. 23 of seniority list of Head Constable without any reason, despite of bad records of misconduct. The petitioners were not given opportunity to lodge complaint, objecting placing of the respondent No. 4 in the seniority list by the aforesaid order and Memorandum. The Respondent No. 4 has made comparison of his juniors, who had been promoted to the post of Sub-Inspector superseding him. They are also junior to the petitioners. Thus, the respondent No. 4 and the persons junior to the respondent No. 4, who had been promoted to the post of Sub-Inspectors, are junior to the petitioners. Therefore, petitioners are also entitled to promotion to the post of Sub-Inspector as juniors have already been promoted to the post of Sub-Inspector. The promotion given to juniors superseding the petitioners is illegal. As soon as the petitioners came to know about the arbitrary and illegal promotion of the Respondent No. 4 to the post of Sub-Inspector, the present writ petition had been filed before this Hon'ble Court seeking quashing of impugned promotion order of the respondent No. 4.

8. That the petitioners beg to submit that a provisional seniority list of Head Constable was prepared and published for claim and objection, vide order No. PHQ/ESTT-A/29/95 dated 30.01.2008. The seniority position of petitioners and respondent No. 4 in the seniority list of Head Constable is as furnished below:-

1. Sri Ngamnei Suyang in serial No. 72.
2. Sri Phurpa Thinley in serial No. 74.
3. Sri Nokchu Sumnyan in serial No. 75.
4. Sri Tashi Tsedar in serial No. 76.
5. Sri Gopak Riba in serial No. 79.
6. Sri Yorke Samchung (Tamang) in serial No. 82.

The respondent No. 4 is junior to the petitioner as per aforesaid seniority list of Head Constable but there was no objection from the respondent NO. 4 against the aforesaid seniority list of Head Constable.

9. That the petitioners beg to submit that another seniority of Head constable was prepared and published after claim and objections were examined and decision taken vide order No. PHQ/ESTT-A/29/95/141 dated 09.04.2008. The seniority position of petitioners and respondent No. 4 in the seniority list of Head Constable is as furnished below:-

1. Sri Ngamnei Suyang in Serial No. 68.
2. Sri Phurpa Thinley in serial No. 70.

3. Sri Nakchu Sumnyan in serial No. 71.
6. Sri Tashi Tsedar in serial No. 72.
7. Sri Gopak Riba in serial No. 75.
8. Sri Yorke Samchung (Tamang) in serial No. 78.

The respondent No. 4 is junior to the petitioners as per aforesaid seniority list of Head Constables but there was no complaint from the respondent No. 4.

10. That the petitioners beg to submit that seniority list of Head Constable of AAP Bn. was issued for the third time vide Memorandum No. PHQ/PER-47/2011 dated 17.04.2013. The seniority position of petitioner and respondent No. 4 in the seniority list of the Head Constables is as furnished below:

1. Sri Ngamnei Suyang in Serial No. 68.
4. Sri Phurpa Thinley in serial No. 70.
5. Sri Nakchu Sumnyan in serial No. 71.
2. Sri Tashi Tsedar in serial No. 72.
3. Sri Gopak Riba in serial No. 75.
4. Sri Yorke Samchung (Tamang) in serial No. 78.

The respondent No. 4 is junior to the petitioner as per aforesaid seniority list of Head Constable. Thus, the respondent No. 4 is junior to the petitioners all along entire service period in different ranks/posts namely, Constable, Lance Naik, Naik and Head Constable.

11. That the petitioners beg to submit that to their utter shock and surprise, a seniority list of Head Constable AAP Bn has been prepared for the fourth time placing the respondent No. 4 above the seniors namely petitioners without any reason vide order No. PHQ/PER-47/2011 dated 10.06.2014. The fixation of seniority in respect of respondent No. 4 was done while disposing of the complaints of Sri Tate Tamut, Head Constable and Sri Anil Borah, Head Constable. There was no reason to discuss and refer the seniority position of the respondent No. 4 while disposing of the complaints of Sri Tate Tamut and seniority position of the respondent No. 4. The respondent authority has arbitrarily passed the order for re-fixing of seniority serial of Respondent No. 4 for fixing at serial No. 23 between H/C C.B. Chetry and H/C Minaram Boruah without assigning any reason. It is unfair, unjust and illegal to place the juniors above the seniors in the seniority list of Head Constable without any reason. Therefore, the impugned order vide No. PHQ/PER-47/2011 dated 10.06.2014 is liable to be set aside and quashed for the interest of justice.

12. That the petitioners beg to submit that being aggrieved by the impugned seniority list of Head Constable AAP Bn. the petitioner No. 3 has submitted representation before the respondent authorities for placing the name of petitioner above the respondent No. 4 in the seniority list of Head Constable on the ground of being senior in service in the post of Head Constable. The respondent No. 3 has arbitrarily dismissed the representation of the petitioner No. 3 without assigning proper reason during the pendency of instant writ petition. Being highly aggrieved by the dismissal of the representation dated 04.08.2014, the petitioner No. 4 has preferred appeal before the Director General of Police, Government of Arunachal Pradesh, Itanagar, which is pending disposal till date. He has submitted another petition dated 28.06.2016 before the Director General of Police, Government of Arunachal Pradesh, Itanagar, which is also pending disposal.

13. That the petitioners beg to submit that to the utter shock and surprise of the petitioners, during the pendency of the aforesaid representation, the respondent No. 4 has been promoted from Head Constable to the rank of Sub-inspector superseding seniors particularly, the petitioners vide order No. PHQ/PER-02/2008-VOL dated 08.09.2015. The promotion of the respondent No. 4 from Head Constable to Sub-Inspector, superseding the seniors that too without disposing of the representation by which seniority of respondent No. 4 has been challenged is arbitrary, unfair, unjust and most illegal. As such, it is deserved to be set aside and quashed.

14. *That the petitioners beg to submit that the case of Wangto Wangsu is different from the present case. He was junior to the petitioners as well as to the respondent No. 4. But, the respondent No. 4 was junior to the petitioners all along the service period from Constable to Head Constable. Therefore, the case of Wangto Wangsu cannot be compared with the present case of the petitioners."*

14. The short Standing Order No. 43, dated 27.01.1993, issued by the Inspector General of Police, Arunachal Pradesh, contains the directions and guidelines governing the mode of promotion of the Constables of Arm Battalions to the rank of Lance Naik and Lance Naik to Naiks, which is extracted herein below:-

"GOVT. OF ARUNACHAL PRADESH
OFFICE OF THE INSPECTOR GERNERAL OF POLICE
ITANAGAR.

NO. P-193/92

Dated Itanagar, the 27th Jan'93

It is time now to start considering promotions of our Armed Battalion constables to the rank of L/ Naik and L/ Naik to Naiks. For this purpose following directions and guidelines should be followed:-

PROMOTION TO THE RANK OF LANCE NAIKS

1. (i) Eligibility: Personnel of the Armed Police Battalions who have completed a minimum qualifying service of 5 yrs will be eligible for appearing in the promotion test.
Out of the personnel having time requisite service, batches in order of seniority, will be put through a pre-promotion cadre course.
2. (a) Firstly, personnel undergo the Cadre course, which shall be of a duration of 90 days, will undergo a test in the various subjects mentioned in the "Syllabus and Scheme of Examination" appended as Annexure 'a' & 'B' and will be awarded marks.
(b) Secondly, past five year personnel records will also be taken into consideration in making an assessment. For this purpose the ACRs, Rewards, Commendations, Punishments on record of the personnel will be examined. Here also a system of positive marking will be adopted as indicated in the "Scheme of Examination".
3. Promotion Board: A board of officers chalked by a Commandant/ SP assisted by two Gazetted Officer member of the rank of Assistant Commandant/ Dy. SP will form the Board for testing and assessing the suitability of the candidates for promotion to the next higher rank which will be constituted by the Inspector General of Police from time to time when necessary.
4. Selection: The selection of qualifying personnel will be considered on the following basis. Personnel securing an aggregate of fifty percent marks in various methods of assessment mentioned above will qualify for promotion to the next higher rank. A list in order of merit will thereafter be prepared. These personnel will be

promoted to the next higher rank in order of their merit as per the Vacancies arising in the next higher rank.

5. Seniority: Inter-se-seniority in the next higher rank will be fixed on the basis of the merit list.

PROMOTION TO THE RANK OF NAIK.

6. Lance Naiks having completed one year service successfully without any adverse report on record will be subjected to an examination in the following subjects which will be of the standard and out of syllabus of CBSE VII.

- 1) English Composition
- 2) English Grammar
- 3) Hindi Composition
- 4) Hindi Grammar.

A Board similarly constituted as in the case for constables will conduct the above examination and prepare a list in order of merit of performance of the L/ Naiks securing a minimum of 50% marks on the aggregate. The qualifying L/ Nks will then be promoted to the next higher rank i.e. Naik subject to the availability of vacancies in the higher rank i.e. Naik”.

15. Scrutiny of the above rival contentions reveal that the basic grievance of the petitioners lies in the placing of the respondent No. 4 at Serial No. 23 above the seniority positions of the petitioners by order, dated 10.06.2014, in the seniority/ gradation list of the Head Constables published for the fourth time, although he was junior throughout their service period in the ranks of Constable, L/ Naik, Naik and Head Constable and the subsequent promotion of the respondent No. 4 to the rank of Sub-Inspector of Police superseding the petitioners, who were senior to him, by order, dated 08.09.2015, on the recommendation of the DPC held on 24.11.2014.

16. Perusal of the documents placed by the respondents go to show that the respondent No. 4 was placed under suspension w.e.f. 05.12.1989 contemplating departmental proceeding against him for misconduct and after conclusion of the Departmental Inquiry, he was awarded with the punishment of forfeiture of two years of approved service, but treating the period of suspension as spent on duty vide an order, dated 08.09.1990, issued by the Commandant, 1st APP Bn., Arunachal Pradesh and accordingly, he was reinstated on duty w.e.f. 08.08.1990 and subsequently, however, by a corrigendum, dated 10.09.1990, rectified the said order, dated 08.08.1990, as “the penalty of forfeiture of 2 (two) years approved service” will be read as “the penalty of forfeiture of 2(two) years service increments without cumulative

effect". The aforesaid order of reinstatement in service on revocation of the suspension order was omitted to be entered in the Service Book of the respondent No. 4, resulting in non-consideration of him by the DPC for promotion to the rank of L/ Naik with his batch mates, which was duly reflected in substance in the order, dated 19.05.1993, issued by the Commandant, 1st and 2nd APP Bn., Arunachal Pradesh. But, on the recommendation of the reviewed DPC, held on 22.08.1997, the respondent No. 4 was conferred with the rank of L/ Naik, on promotion, from the rank of Constable w.e.f. 19.05.1993, pursuant to which, a revised gradation list of L/ Naik was published on 15.06.1998, where the respondent No. 4 was placed at Serial No. 33, as per the revised criteria adopted by the Police Head Quarter (PHQ), Arunachal Pradesh, and after the names of 2 (two) Constables, whose names were mistakenly published in the L/ Naik seniority list were struck off as they could not qualify in the cadre course of L/ Naik held from 12.01.1993 to 22.04.1993. Thereafter, on the basis of recommendation of the DPC, held on 30.12.2003, the respondent No. 4 was promoted from the rank of L/ Naik to the rank of Head Constable vide order, dated 20.01.2004 and placed his seniority at serial No.82 in the provisional seniority list of Head Constables, although he did not appear in the selection test for promotion to the rank of Naik, and whereas his juniors were in the meantime promoted to the rank of Head Constable w.e.f. 17.04.1997. However, on appeal preferred by the respondent No.4, the respondent No.3 by order, dated 06.02.2014, re-fixed his seniority at serial No.23 of the seniority list of Head Constables. The respondent No.4 was given promotion to the rank of Sub-Inspector of Police by an order, dated 08.09.2015, on the recommendation of DPC, held on 24.11.2014.

17. Be it mentioned that the employee earns promotion by dint of hard work, good conduct and result oriented performance. The DPC primarily assesses the suitability for promotion on the basis of service record and the relevant recruitment rules, on case to case basis, for which reason, it is the duty of the competent authority to maintain every employee's service record with correct upto date entries. Further, an employee, who has undergone minor penalty for misconduct, his case may be considered for promotion by the DPC, after expiry of the currency of the penalty. In such a case, his seniority can be fixed as per his position in the panel of the promotee employees and his

further promotion is to be considered from the date of actual promotion along with consideration of the other eligibility criteria as per the relevant recruitment rules.

18. In the instant case, the relevant documents show, as discussed in the foregoing paragraphs, that the respondent No.4, after having got re-instated on duty, on revocation of his suspension, w.e.f. 08.08.1990, by order, dated 08.08.1990, and after expiry of the currency of the penalty, by order, dated 18.09.1997, on the purported recommendation of the review DPC, held on 22.08.1997, promoted him to the rank of L/Naik, with retrospective effect from 19.05.1993, and the competent authority accordingly placed him at serial No.33 of the seniority list of the L/Naiks. Further, based on the recommendation of the DPC, held on 30.12.2003, by order, dated 20.01.2004, the respondent No.4 was again promoted to the rank of Head Constable giving retrospective effect from 30.12.2003 and his seniority was placed at serial No.23 of the gradation/seniority list of the Head Constables, by order, dated 10.06.2014, above the seniority position of the petitioners. Furthermore, on the recommendation of the DPC, held on 24.11.2014, the respondent No.4 was again promoted to the rank of Sub-Inspector of Police from the rank of Head Constable, by order, dated 08.09.2015, superseding the petitioner Head Constables. It is noticed that the respondent No.4 was promoted from time to time from the rank of L/Naik to the rank of Sub-Inspector of Police and his respective seniority positions in the relevant each rank in service were fixed on the basis of consideration of his representations submitted to the highest authority of the department from time to time and thereupon, constituted DPC as stated above, which purportedly recommended his promotions undermining the seniority of the petitioners.

19. The relevant documents placed by the parties before this Court for scrutiny do not reveal whether the prescribed procedure/scheme of examination contained in the Standing Order No.43, dated 27.01.1993, quoted above, in the matter of selection for promotions and the relevant other rules in determination of seniority purportedly based on the revised criteria in each rank so earned by the respondent No.4 were strictly and expressedly followed. The respondent authorities have not yet considered the representation, dated 04.08.2014, submitted by the petitioner No. 3 whereby he raised objection

against the seniority list of the Head Constables, dated 10.06.2014 and prayed for correction in his seniority position. The petitioners, on the other hand, have not specifically challenged the promotions of the respondent No. 4 to the rank of L/Naik and Head Constable, when admittedly he was junior in the initial appointment as Constable to the petitioners No. 1, 2 and 3.

20. For the reasons set forth above, the petition stands **partly allowed** and the matter is remanded back to the respondent authority to review the seniority/gradation list of the Head Constables of AAP Bn. vide order No. PHQ/PER-47/2011, dated 10.06.2014, in accordance with the relevant rules, within a period of 3(three) months from the date of receipt of a certified copy of this order. This Court is, however, not inclined to interfere at this stage in the impugned order No. PHQ/PER-02/2008-VOL, dated 08.09.2015, whereby the respondent No. 4 got promoted to the rank of Sub-Inspector of Police.

21. The petitioners shall be at liberty to submit their fresh representation(s) in regard to their grievances to the competent authority for redressal, within 15(fifteen) days and if any representation is filed by the petitioners, the same shall be considered and disposed of by well reasoned order, in accordance with law within the above stipulated period. The petitioners are hereby given liberty to approach afresh this Court, if aggrieved by the decision to be made in this regard by the competent authority.

This disposes of the writ petition.

JUDGE

Talom