

**THE HIGH COURT OF SIKKIM: GANGTOK**

(Civil Writ Jurisdiction)

DATED : 10.10.2012

CORAM

HON'BLE MR. JUSTICE PERMOD KOHLI, CHIEF JUSTICE

Writ Petition (Civil) No. 33 of 2010

Shri Adup Tshering Bhutia,
Inspector of Police,
Sikkim Armed Police,
Government of Sikkim,
Gangtok.

..... **Petitioner.**

- versus -

1. The State of Sikkim,
Through the Chief Secretary,
Tashiling Secretariat Building,
Government of Sikkim,
Gangtok,
East Sikkim.
2. The Department of Personnel, A.R.
& Training, Public Grievances, Career
Option, Employment Sikkim
Development and Chief Minister's Self-
Employment Scheme,
Gangtok through:
The Principal Secretary,
Tashiling,
Gangtok - 737 101,
East Sikkim.
3. Home Department through:
The Principal Secretary,
Tashiling,
Gangtok - 737 101.



4. Sikkim Police Department through:
The Director General of Police,
Police Head Quarter,
Government of Sikkim,
Gangtok,
East Sikkim.
5. The Additional Director General
of Police,
Special Branch,
Government of Sikkim,
Yangthang Kothi,
Gangtok,
East Sikkim.
6. Senior Superintendent of Police/Hqrs.,
Police Headquarters,
Gangtok,
Sikkim.
7. Shri Tilok Chettri,
Deputy Superintendent of Police
(Officiating)
District Prison/South & West,
Namchi,
South Sikkim.
8. Shri B. B. Subba,
Deputy Superintendent of Police
(Officiating)
Office of Superintendent of Police,
South District,
Namchi,
South Sikkim.
9. Shri Tulshi Chettri,
Deputy Superintendent of Police
(Officiating)
Sikkim Armed Police,
Pangthang,
East Sikkim.
10. Shri Nima Cheder Bhutia,
Deputy Superintendent of Police
(Officiating)
Sikkim Armed Police,
Pangthang,
East Sikkim.



11. Shri Sonam Dawa Lepcha,
Deputy Superintendent of Police
(Officiating)
Special Branch,
Gangtok,
East Sikkim.
12. Shri Purna Kumar Lohar,
Deputy Superintendent of Police
(Officiating)
Special Branch,
Gangtok,
East Sikkim.
13. Ms. Chewang Lhamu Bhutia,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.
14. Shri Shyam Kala Basnet,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.
15. Shri Prasad Dewan,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
Kingsway,
New Delhi.
16. Shri Kewal Prasad Nepal,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.
17. Shri Bhanu Bhakta Kharel,
Deputy Superintendent of Police
(Officiating)



Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.

18. Shri Sonam Gyurmit Lepcha,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.

19. Ms. Bishnu Kumari Rai,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.

20. Ms. Ongmu Bhutia,
Deputy Superintendent of Police
(Officiating)
Indian Reserve Battalion,
C/o. C.O., SAP,
P.O. Penlong, Pangthang,
East Sikkim.

21. Shri Sambhu Pradhan,
Deputy Superintendent of Police
(Officiating)
Sikkim Armed Police,
Gangtok, East Sikkim.

22. Shri Laxuman Pradhan,
Inspector of Police
Reader to ADGP,
Gangtok, East Sikkim.

23. Shri Duk Tshering Lepcha,
Inspector of Police,
Special Branch,
Gangtok, East Sikkim.

24. Shri Phur Tshering Lepcha,
Inspector of Police,
Arms Section,
Gangtok, East Sikkim.



25. Shri Hari Das Rai,
Inspector of Police,
CI,
Gangtok, East Sikkim.
26. Shri Radesh Tamang,
Inspector of Police,
Mangan, North Sikkim.
27. Shri Dhan Singh Rai,
Inspector of Police,
Sikkim Vigilance Police,
Gangtok, East Sikkim.
28. Ms. Tshering Eden Bhutia,
Inspector of Police,
Traffic,
Gangtok, East Sikkim.

...Respondents

- For Petitioner : M/s. B.R. Pradhan, Sr. Advocate
with Pema Yeshey Bhutia,
Karma Tsh. Bhutia and Yadev
Sharma, Advocates.
- For State-respondents : M/s. J. B. Pradhan, Addl.
Advocate General with Karma
Thinlay Namgyal, Government
Advocate and S. K. Chettri,
Assistant Government Advocate.
- For Private-respondents : M/s. A. Moulik, Sr. Advocate,
No. 7 to 17, 19, 20, 22,
23 and 26 to 28. K. D. Bhutia, Ranjit Prasad and
Pujan Kharka, Advocates.

J U D G M E N T

Kohli Permod, CJ.

The controversy in the present petition relates to fixation of seniority of officials constituting the amalgamated force and their consequential promotional claims on merger



of different wings of police. Relevant factual matrix extracted from the pleadings of the parties is noticed hereinafter.

2. The police force in the State of Sikkim was governed and regulated by Sikkim Police Rules. These rules were replaced by the Sikkim Police Act, 1969, which came into operation on 15.06.1969. Petitioner was enrolled as a constable in Sikkim police on 12.08.1974. In the year 1978, the State enacted another Act, namely, Sikkim Vigilance Police Act, 1978 creating a separate wing of the police, namely, Sikkim Vigilance Police. Petitioner was absorbed in the Sikkim Vigilance Police on 12.09.1978. In the year 1981, another force, namely, Sikkim Armed Police Force was created under a newly enacted Sikkim Armed Police Force Act, 1981. Separate sets of recruitment rules were also framed under Article 309 of the Constitution of India for different wings of the police force in the State of Sikkim. The Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981 were given retrospective effect with effect from 01.04.1974, whereas the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981 were notified on 19.12.1981. Petitioner was promoted as Sub-Inspector in the Sikkim Vigilance Police on 12.12.1986 and as Inspector on 26.09.1995.



3. Respondent No.21 was recruited as a constable in Sikkim Armed Police in the year 1975 and promoted as Sub-Inspector in Sikkim Police on 01.06.1986 and as Inspector on 04.01.1994 in the same branch of the police force. Respondents No.7 to 20 were appointed as Sub-Inspectors in Sikkim Police on 08.03.1984 and respondents No.7 and 8 came to be promoted as Inspectors in Sikkim Police on 20.07.2000, whereas respondents No.9 to 20 were promoted as Prosecuting Inspectors in Sikkim Police in officiating capacity on 28.02.2001. Respondents No.22 to 27 were promoted as Sub-Inspectors on 09.09.1986, whereas respondent No.28 was directly appointed as Sub-Inspector on 27.10.1986. Respondents No.22 to 28 were later promoted as Prosecuting Inspectors in Sikkim Police in officiating capacity on 26.11.2002. In the year 1998, 3 (three) police officials from the Sikkim Vigilance Police Force filed Writ Petition No.513 of 1998, seeking a direction for creation of promotional avenues for the members of Sikkim Vigilance Police Force beyond the rank of Inspector. During pendency of this petition, the State Government constituted a One Man Commission comprising of Hon'ble Mr. Justice N. G. Das (Retd.), the then Chairman, Sikkim Commission for Backward Classes for comprehensive review of all the recruitment rules of the different wings of the Sikkim Police



vide Notification dated 10.09.1989. The terms of reference of the Commission were as under: -

"(1) To comprehensively review the existing Recruitment Rules of all the different wings of Sikkim Police so as to arrive at an appropriate solution, which would meet promotional aspirations of the entire Police Force.

(2) To examine the necessity for integration of the different Recruitment Rules particularly

(a) Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1988, (b) the Sikkim Armed Force (Recruitment, Promotion and other Conditions of Service) Rules, 1989 and (c) the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981, so as to bring about long term solution to meet the promotional aspirations of the entire Police Force.

The Commission shall submit its report on or before 31.12.99."

4. Pursuant to the above notification, the One Man Commission submitted its report dated 10.02.2000 (Annexure P-7).

5. The report of the One Man Commission was accepted by the State Government for integration of the three distinct services of the police. With the object of creating one unified police force and to grant statutory sanction to the amalgamated force, the State Government framed the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 under Article 309 of the Constitution of India as notified vide Notification No.27/Gen/DOP dated 08.09.2000 published in the Extraordinary Government



Gazette on 11.09.2000. Rule 4 deals with the initial Constitution of the Force, whereas Rule 9 deals with the Seniority. Both the Rules are reproduced hereunder:-

"4. Constitution of the Force:

The Force shall consist of the following, namely:-

- (a) Persons holding the posts upto and including Inspectors under Schedule I of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981.
- (b) Persons holding the posts of Constable, Head Constable, Assistant sub-Inspector, Sub-Inspector and Inspector under the Sikkim Vigilance Police Force (Recruitment, Promotion and Seniority) Rules, 1981.
- (c) Persons holding the posts of Sub-Inspector and Inspector under the Sikkim Armed Police (Recruitment, Promotion and Seniority) Rules, 1989.
- (d) Persons recruited to the Force in accordance with the provision of these rules."

"9. Seniority

- (i) The relative seniority of the members of the force recruited directly, shall be determined by the order of merit in which they are selected for such recruitment. Members as a result of an earlier selection shall be senior to those recruited as a result of a subsequent selection.
- (ii) The relative seniority of persons promoted from a lower post shall be on the basis of seniority-cum-merit subject to successfully passing the prescribed exam.
- (iii) The relative seniority inter-se of members recruited directly and through promotion shall be determined according to the rotation of vacancies between direct recruits and promotes which shall be based on the quota of vacancies reserved for direct recruitment and promotion, respectively, in these rules."



6. From perusal of Rule 4, it appears that persons holding the posts upto the rank of Inspector in the Sikkim Police Force governed by the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981 and persons holding the posts of Constable, Head Constable, Assistant Sub-Inspector, Sub-Inspector and Inspector in the Sikkim Vigilance Police Force governed by the Sikkim Vigilance Police Force (Recruitment, Promotion and Seniority) Rules, 1981 and persons holding the posts of Sub-Inspector and Inspector in the Sikkim Armed Police governed by the Sikkim Armed Police (Recruitment, Promotion and Seniority) Rules, 1989 would be the members of the newly constituted/amalgamated force in their respective cadres. This means that merger was at the level of each cadre of the service right from the Constable to the Inspector in so far the Sikkim Police Force and Sikkim Vigilance Police Force are concerned, and at the level of the Sub-Inspector and Inspector with the Sikkim Armed Police Force.

7. Rule 9 which deals with the seniority, however, did not specifically attend to the question of inter-seniority at the level of each cadre of merged force. This



fact is evident from Notification dated 31.07.2000 (Annexure P-8A). The Notification is reproduced hereunder: -

“
GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, ADM. REF. & TRG.
TASHILING
GANGTOK – SIKKIM 707101

No.19/GEN/DOP

Dated : 31.7.2000

NOTIFICATION

Whereas the Governor of Sikkim was pleased to constitute a One-man Commission comprising of the Hon'ble Justice N. G. Das, Chairman, Sikkim Commission for Backward Classes, for a comprehensive review of all the Recruitment Rules of different wings of the Sikkim Police vide notification No.36/GEN/DOP dated 10.9.1999.

2. And whereas on receipt of the Report of the Commission on 10.2.2000 the same was studied and it is observed that no clear term/recommendation has emerged from the report on the point of fixation of seniority particularly at the level of Sub-Inspector.

3. And whereas the method of fixation of seniority of Inspectors and Sub-Inspectors of different wings of the Sikkim Police has to be taken care of while framing common Recruitment Rules as per the recommendations of the Commission in view of the pending writ petition filed by the Inspectors serving in Sikkim Vigilance Police.

4. Therefore, the Governor of Sikkim is pleased to refer the matter regarding method and modalities for fixation of seniority of the Inspectors and Sub-Inspectors to the One-man Commission constituted vide Notification No.36/GEN/DOP dated 10.9.1999.

This Commission shall submit its report on or before 7.8.2000.

By Order and in the name of Governor.

R. S. Basnet
Secretary to the Government
Department of Personnel, Adm. Ref. & Trg.”



No material has been produced on record to demonstrate that the One Man Commission again examined the question of inter-se-seniority and submitted its report.

8. In the meantime, the Police Headquarters, Sikkim notified a provisional integrated inter-se-seniority list of Inspectors of Sikkim Police comprising of all the three branches of the merged force as on 02.12.2002 vide its Circular dated 07.12.2002, inviting representations/objections. It is relevant to note that paragraph 2 of the Circular set out the criterion for determining the inter-se-seniority at the level of the Inspectors, which reads as under:-

"2. Seniority at the time of appointment/promotion as Sub-Inspector has been fixed as the criterion in determining the inter-se-seniority at the level of Inspectors."

9. From the above criterion, it appears that the seniority of the Inspectors was taken at the time of appointment/promotion as Sub-Inspector. In the provisional seniority list, the petitioner was placed at Sl. No.36 and all the private respondents above him. The petitioner filed his objection on 31.12.2002 claiming his seniority over and above the private respondents on the basis of his promotion as Inspector on substantive basis with effect from 25.09.1995, i.e. prior to the promotion of the private



respondents as Inspectors in their respective wings of the police prior to merger. It seems that thereafter also another provisional seniority list of Police Inspectors was circulated vide letter dated 22.09.2006 inviting objections. Police Headquarters, Sikkim notified the final/confirmed seniority list of Police Inspectors vide Notification No.01/PHQ dated 14.11.2006. In this seniority list, the petitioner was placed at Sl. No.27 and all the private respondents above him. The petitioner was shown as Officiating Inspector. The petitioner filed his objection to this seniority list vide his petition dated 08.01.2007 and thereafter, served a Legal Notice dated 11.01.2007 objecting to the seniority list. Having failed to receive any response, he filed W.P. (C) No.10 of 2007 challenging the final seniority list dated 14.11.2006 and also the stipulation therein showing him as "Officiating Inspector".

10. This Court vide its Order dated 22.05.2007 restrained the respondents from in any manner giving effect to the Notification dated 14.11.2006 in so far as it described the annexure thereof as a confirmed seniority list and directed to treat the status of the petitioner as "Officiating" only as provisional one and his description as Officiating in the Notification shall be given no effect. The petitioner was



also allowed to make a representation and the respondents were allowed to take decisions notwithstanding the pendency of the Writ Petition.

11. While the above Writ Petition was pending for consideration, the Police Department through the Superintendent of Police, Police Headquarters issued Memorandum dated 07.09.2007 notifying the criterion for fixation of inter-se-seniority of Inspectors in the amalgamated cadre at the level of the Sub-Inspectors and invited objections from the affected persons. Petitioner filed his objection dated 26.09.2007 to this Memorandum. In the meantime, the State Government granted officiating promotion to respondents No.7 and 8 to the rank of the Deputy Superintendent of Police vide Office Order No.7604/G/DOP dated 18.07.2008 (Annexure P-20) subject to the final decision of the Writ Petition No.10 of 2007 filed by the petitioner. This was followed by another Office Order dated 29.08.2008 granting substantive promotion to the private respondents and others as Police Inspectors subject to the final decision of the Writ Petition.

12. When the Writ Petition filed by the petitioner came up for consideration before this Court on 04.02.2007, Hon'ble Court taking note of promotion granted to the



private respondents No.7 and 8 and failure of official respondents to decide the representation of the petitioner directed personal appearance of Mr. C. L. Sharma, Special Secretary to the Government of Sikkim and the Superintendent of Police, Police Headquarters for non-compliance of the Court's order. Both these officers filed their replies pleading therein that the alleged offending order has been passed pursuant to the legal advice tendered by the Legal Remembrancer-cum-Secretary, Law, Government of Sikkim and the Chairman, Law Commission of Sikkim. This Court vide its Order dated 23.06.2009 summoned the Legal Remembrancer-cum-Secretary, Law to appear in person to explain. It seems that the matter was considered by the State Government and the Notification No.01/PHQ dated 14.11.2006 notifying the combined final seniority list came to be withdrawn vide Notification No.01/PHQ/09 dated 24.07.2009. This withdrawal order was placed before this Court in W.P. (C) No.10 of 2007. The Government also proposed to publish a final seniority list after affording opportunity to all the members of the cadre. On that basis this Court vide its Order dated 27.08.2009 disposed of the Writ Petition with the following observations: -

"7. Having considered the above proposed amendment in the prayer, we are of the view that since the Government itself has withdrawn the impugned Notification dated 14.11.2006 and



proposed to publish a final seniority list after affording opportunities to all the members of the cadre to file their respective claims and objections, the proposed amendment seeking inclusion of the above quoted prayer appears to be pre-matured.

8. On due consideration of the facts and circumstances of the case in its entirety including the Notification dated 24.07.2009 annexed as Annexure A-1 in the CM Appl. No. 48 of 2009 and also upon hearing the learned Counsel for the parties, we are of the considered opinion that this writ petition has been rendered as infructuous.

9. Needless to say that the petitioner, if aggrieved by publication of final seniority list, shall be at liberty to approach this Court for redressal of his grievances."

13. Since the final seniority list of Inspectors earlier notified vide Notification dated 14.11.2006 stood withdrawn, the State Government instead of re-determining the seniority issued Notification No. 02/PHQ/2010 dated 19.01.2010 granting retrospective promotion to respondents No. 7 to 28 from the date(s) their counterparts in the Sikkim Armed Police or Sikkim Vigilance Police were promoted as Inspectors prior to merger. This retrospective promotion was allegedly granted pursuant to the reports of Committee of Senior Police Officers constituted by the Director General of Police approved by the Police Establishment Board and the Government and report of another Committee constituted by the Government headed by the Chief Secretary. By virtue of retrospective promotion as Inspectors, all the private respondents were placed at a



higher pedestal in the cadre of Inspectors than the petitioner, who was promoted as Inspector in Sikkim Vigilance Police on 26.09.1995 on substantive basis. With a view to justify and legalize its administrative action of granting retrospective promotion to the private respondents, the Government amended the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 vide Notification No.222/GEN/DOP dated 20.01.2010. The amendment was carried out in Rule 9 of 2000 Rules by inserting sub-clause (iv) after sub-clause (iii) as also in the Schedule-I and Schedule-II and introduction of Rule 17 in the aforementioned Rules. For the purpose of brevity, the notification is reproduced hereunder: -

**GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, ADM. REFORMS,
TRAINING, PUBLIC GRIEVANCES, CAREER
OPTIONS & EMPLOYMENT SKILL DEVELOPMENT
AND CHIEF MINISTER'S SELF EMPLOYMENT
SCHEME
GANGTOK - SIKKIM 707101**

No.222/GEN/DOP

Dated : 20.1.10

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Sikkim hereby makes the following rules to amend the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000, namely:

1. (1) These rules may be called the Sikkim Police Force (Recruitment, Promotion and Seniority) Amendment Rules, 2009.
- (2) They shall be deemed to have come into force on the 11th day of September, 2000.



2. In the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000; (hereinafter referred to as the said rules), after sub-rule (iii) of rule 9, the following shall be inserted, namely:-

"(iv) (a) The inter-se-seniority of police personnel up to the rank of Assistant Sub-Inspector in the Sikkim Police and Sikkim Vigilance Police on the date of amalgamation of the cadres for the purpose of their promotion to the next rank shall be determined on the basis of their date of appointment to the entry level post of Constable.

(b) The inter-se-seniority of Police Inspectors of Sikkim Police, Sikkim Vigilance Police, Sikkim Armed Police and Indian Reserve Battalion on the date of amalgamation of the cadres for the purpose of their promotion to the rank of Deputy Superintendent of Police shall be determined on the basis of their date of appointment to the entry level of Sub-Inspector."

3. In the said rules, in Schedule I, the existing paragraph (b) under the Column 8, against the post of Assistant Sub-Inspector and in Schedule II, the existing paragraph (b) under the column 8, against the post of Sub-Inspector and Inspector, shall be omitted.

4. In the said rules, after rule 16, the following shall be inserted, namely: -

"17. Power to relax: Where the Government of Sikkim is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax and of the provisions of these rules with respect to any class or category of persons or post."

BY ORDER,

Sd/-

(Tara Sampang) Mrs

JOINT SECRETARY TO THE GOVERNMENT
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING,
PUBLIC GRIEVANCES, CAREER OPTIONS & EMPLOYMENT SKILL
DEVELOPMENT AND CHIEF MINISTER'S SELF EMPLOYMENT
SCHEME"




14. It is pertinent to note that retrospective promotion was given on 19.01.2010 and the Rules were amended on the following day. The respondents immediately, thereafter, issued an Office Memorandum No.47/PHQ/10 dated 23.01.2010 notifying the provisional inter-se-seniority of Police Inspectors drawn on the basis of the amended Rules and retrospective promotion granted to the private respondents. Through this Memorandum, representations/objections were invited from the aggrieved persons. In the provisional seniority list of Police Inspectors in the amalgamated cadre, the private respondents were placed from Sl. No.1 to 23, whereas the petitioner was placed at Sl. No.24. The petitioner filed his objection dated 11.02.2010 to the provisional seniority list. It seems that the State Government did not accept the contention of the petitioner and notified the final seniority list vide Notification No.03/PHQ/10 dated 03.04.2010 placing private respondents from Sl. No.1 to 22 and the petitioner at Sl. No.23.

15. Aggrieved of the final seniority list, the petitioner preferred an appeal on 08.04.2010 before the Government. In the meantime, the respondents No.7 to 10 were promoted to the rank of Deputy Superintendent of Police in officiating capacity vide Office Order No.554/G/DOP dated



03.05.2010 (Annexure P-34). The aforesaid Order was followed by another Order No.567/G/DOP dated 04.06.2010 (Annexure P-36) granting promotion to respondents No.11 to 15 in officiating capacity. Yet another Order No.599/G/DOP dated 16.06.2010 came to be issued further granting officiating promotion to respondents No.16 to 21 (Annexure P-37). Aggrieved of the final seniority list, promotion of private respondents to the post of Deputy Superintendent of Police and the Notification amending the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000, the petitioner filed this petition before this Court.

 **16.** During the pendency of the petition, the petitioner was also promoted as Deputy Superintendent of Police vide Order No.8902/G/DOP dated 23.02.2012. Thereupon the petitioner amended his Writ Petition and incorporated further reliefs for his retrospective promotion from the date the private respondents were promoted as Deputy Superintendent of Police. It is also relevant to note that during the pendency of this petition, the petitioner stands retired with effect from 31.08.2012. The question of seniority in normal circumstances becomes irrelevant. However, in view of the prayer of the petitioner for retrospective promotion and consequential retiral benefits



emanating there from the question of seniority needs to be addressed.

17. It is pertinent to note here that after the retirement of the petitioner, respondent-State was asked to consider the retrospective promotion of the petitioner from the date the first promotion was granted to any of the private respondents, but it seems that the State is unwilling and Mr. J. B. Pradhan, learned Addl. Advocate General appearing for the State, conveyed to this Court that the official respondents are not willing to consider the case of the petitioner for retrospective promotion which would have avoided the consideration of intricate issues regarding the validity of the amended Rules and the question of retrospective promotion to the private respondents. Hence, all the relevant issues involved in this petition are being adjudicated upon.

18. I heard the learned counsel for the parties.

19. The petitioner's grievance is in respect to the action of the official respondents granting retrospective promotion to the private respondents making them senior to the petitioner even when their officiating/substantive dates of appointment as Inspectors of Police in their respective services prior to merger were much later than the date of



appointment of the petitioner. The dates of appointment of the petitioner and the private respondents as Inspectors on officiating and confirmed basis are reflected hereinafter in form of comparative chart indicating the advantage of number of years to each one of the private respondents.

COMPARATIVE CHART

Sl. No.	Petitioner/ Respondent Nos.	Name & Cadre	Date of appointment as SI	Date of Promotion as PI (Officiating)	Date of Promotion as PI (Confirmed)	Date of Promotion as PI after retrospective promotion vide Order dt. 19.1.2010	No. of years gained by retrospective promotion vide Order dt. 19.1.2010
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Petitioner	Adup Tshering Bhutia Sikkim Vigilance Police	22.12.1986		26.09.1995	26.09.1995	NIL
2.	21.	Sambhu Pradhan Sikkim Armed Police	01.06.1986		04.01.1994	04.01.1994	NIL
3.	7.	Tilok Kr. Chettri Sikkim Police	08.03.1984		07.02.2000	04.01.1994	6 yrs.
4.	8.	B. B. Subba Sikkim Police	08.03.1984		07.02.2000	04.01.1994	6 yrs.
5.	9.	Tulsi Chettri Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
6.	10.	Nima Chadar Bhutia Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
7.	11.	Sonam Dawa Lepcha Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
8.	12.	Purna Kumar Lohar Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
9.	13.	Chewang Lhamu Bhutia Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
10.	14.	Shyam Kala Basnet Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
11.	15.	Prasad Dewan Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
12.	16.	Kewal Prasad Nepal Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
13.	17.	Bhanu Bhakta Kharal Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
14.	18. (Deleted vide order dated 1.12.2011)	Sonam Gyurmit Lepcha Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
15.	19.	Bishnu Kumari Rai Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
16.	20.	Ongmu Bhutia Sikkim Police	08.03.1984	28.02.2001	29.08.2008	04.01.1994	14 yrs 7 months
17.	22.	Laxuman Pradhan Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
18.	23.	Duk Tshering Lepcha Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
19.	24. (Deleted vide order dated 1.12.2011)	Phur Tshering Lepcha Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
20.	25. (Deleted vide order dated 1.12.2011)	Hari Das Rai Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
21.	26.	Radesh Tamang Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
22.	27.	Dhan Singh Rai Sikkim Police	09.09.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months
23.	28.	Tshering Eden Bhutia Sikkim Police	27.10.1986	26.11.2002	29.08.2008	26.09.1995	13 yrs 11 months



20. It is thus contended that each one of the private respondents except respondent No. 21 has been granted benefit of retrospective promotion ranging between 6 years to 14 years and 7 months. Even when they were Sub-Inspectors, they had been promoted as Inspectors without there being any vacancy available in the cadres of the Inspectors for such promotion. The sole purpose of such retrospective promotion is to give undue benefit to the private respondents to gain seniority over and above the petitioner and to ultimately, illegally promote them as Deputy Superintendents of Police. The petitioner's further contention is that by this action, his promotional right has been adversely affected. It is stated that the entire exercise is totally illegal, arbitrary and unconstitutional.

21. Mr. J. B. Pradhan, learned Addl. Advocate General and Mr. A. Moulik, Senior Advocate, appearing for the State and private respondents respectively, however, vehemently argued that after the merger of the different services/branches of the Police Department, the seniority of the amalgamated cadres was required to be fixed and with a view to consider the claims of all the members of different Forces, governed by separate rules/acts granted them equitable relief. The State Government after constituting various Committees and considering their reports, granted



retrospective promotion and resultant seniority to the private respondents, who had disadvantage of delayed promotions in their respective services. It is stated on behalf of the respondents that the petitioner got accelerated promotion being member of vigilance police service as better promotional avenues were available in that service, whereas the private respondents who were members of the Sikkim Police (an executive branch of the Police) and Sikkim Armed Police had, lesser chances of promotion, even when they were appointed as Sub-inspectors earlier than the petitioner in their respective services. It is stated that they could only be promoted as Inspectors on availability of vacancy/ vacancies. The cadre being much larger, they were able to secure promotion years after the promotion of the petitioner. It is, accordingly, submitted that on consideration of the issue of seniority by various Committees including the Committee headed by the Chief Secretary, the State Government in its wisdom thought it appropriate to grant them retrospective promotion from the date the persons in Sikkim Armed Police and Sikkim Vigilance Police were appointed as inspectors to remove the anomaly for purpose of fixation of the seniority and further promotion.

22. According to the learned counsel appearing for the private respondents, the State has had always the right and



liberty to grant retrospective promotion and seniority which action is constitutionally permissible. Mr. Moulik further submitted that before the merger the members of Vigilance Police could only be promoted upto the rank of Inspectors and there were no promotional avenues for them. Thus, the merger was primarily in the interest of the members of Sikkim Vigilance Police and the question of inter-se-seniority of the members of Sikkim Vigilance Police Force, Sikkim Armed Police and Sikkim Police became relevant only after the merger of the three Forces. It is further submitted that the petitioner cannot have any grievance against the fixation of the seniority of the private respondents or their retrospective promotion as Inspectors.

23. It is admitted position that prior to merger, the members of Sikkim Vigilance Police Force could only be promoted upto the rank of Inspector under the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981 and the posts of Deputy Superintendent of Police even in the Vigilance Police Service could only be filled up by deputation from the Sikkim Police, which was governed by separate Recruitment Rules, namely, the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981.



24. It is settled law that promotion is not a right but right to be considered for the promotion is one of the recognised and vested rights of a public servant. Prior to merger only members of the Sikkim Police Force were granted promotion beyond the rank of Inspectors and such promotees were being deputed to Sikkim Vigilance Police and Sikkim Armed Police to man the sanctioned posts of Deputy Superintendents of Police in latter two services. This anomaly was challenged by the three members of the Sikkim Vigilance Police Force in W.P. (C) No.513 of 1998. Realising the anomaly and to remove the discrepancy and inequality created by the Recruitment Rules depriving a particular branch of the Force from right of consideration for further promotion, the State Government appointed Justice N. G. Das (Retd.) Commission to examine the question of integration of different Recruitment Rules and these services for equitable promotional avenues. Justice N. G. Das Commission submitted its report proposing complete integration of two services, i.e. Sikkim Police Force and Sikkim Vigilance Police Force at all the levels right from the entry level posts of Constable/Sub-Inspector to Inspector and merger of Sikkim Armed Police at the levels of Sub-Inspector and Inspector. These recommendations of the Commission were accepted by the State Government. With



a view to implement the recommendations, the State Government framed the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 under Article 309 of the Constitution of India vide its Notification dated 08.09.2000 published in Government Gazette on 11.09.2000.

25. As noticed hereinabove, Section 4 of the 2000 Rules deals with the initial Constitution of the Force. Thus new Recruitment Rules constituting new service, namely, Sikkim Police Force, comprising amalgamation of all the three Forces came to be created. From reading of Rule 4, it appears that merger has been sanctioned in respect to all the cadres of two services, i.e. Sikkim Police Force and Sikkim Vigilance Police Force, namely, Constable, Head Constable, Assistant Sub-Inspector, Sub-Inspector and Inspector. Whereas the Sikkim Armed Police Force is concerned, the merger is only at the level of Sub-Inspector and Inspector. The merger of different cadres would mean that the members of each cadre of the amalgamated Forces will merge at the same level only. Thus, an Inspector could only be merged with the cadre of Inspector. The merger became effective on 11.09.2000 when the Recruitment Rules of 2000 were published in the Government Gazette. Thus, on that day, Sub-Inspectors of all the three Forces



constituted one single cadre and similarly, Inspectors of all the three Forces constituted one single cadre. On merger, the inter-se-seniority could be fixed on the basis of their length of service in that cadre. In that eventuality, the petitioner having been appointed as Inspector on 26.09.1995 should have ranked senior to the private respondents who were promoted as Inspectors much later. It is useful to note that except respondent No. 21 who was appointed as Inspector on 04.01.1994, respondents No.7 and 8 were promoted as Inspectors on 07.02.2000, whereas all other private respondents were promoted as Inspectors on 29.08.2008 on substantive basis. The only legal consequence of such merger could be that respondent No.21 is to rank senior than the petitioner on the basis of his prior promotion as Inspector and all other private respondents were to rank below the petitioner in the seniority. The State-respondents, however, by granting retrospective promotion to the private respondents No.7 to 28 except 21, made them Inspectors from the year 1994, i.e. respondents No.7 to 20 with effect from 04.01.1994 and No.22 to 28 with effect from 26.09.1995. This retrospective promotion was granted to them when they were only holding the substantive rank of Sub-Inspectors and there were no vacancies in their respective services for such promotion. As



a consequence of such retrospective promotion, respondents No. 7 and 8 got the benefit of 6 years, respondents No.22 to 28 got benefit of 13 years and 11 months whereas the respondents No.9 to 20 got benefit of 14 years and 7 months of service as Inspectors.

26. Though the retrospective promotion was granted vide Order dated 19.01.2010, which was only an administrative order, however with a view to grant statutory colour to retrospective promotion, amendment was made to the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000. This amendment came to be made on 20.01.2010, i.e. after almost 10 years of the merger, the effective date of merger being 11.09.2000.

27. The State as also the private respondents defended the action of the State primarily on two accounts; (i) that the State has power to grant retrospective promotion and (ii) such promotion has been granted to facilitate fixation of inter-se-seniority of the merged cadre, particularly, at the rank of Inspectors to remove any anomaly because of disadvantage suffered by the members of the Sikkim Police Force prior to merger and provide them equal promotional avenues. To buttress their stand, these respondents have relied upon the reports of the Committees



constituted by Government from time to time. The First Committee of Police Officers headed by Shri Avijit Dutta, IPS, IGP, Special Branch recommended fixation of inter-se-seniority of Vigilance Police Officers in March, 2001 vis-à-vis Civil Police Officers on the basis of their dates of appointment to the entry level posts of Constable and Sub-Inspectors whichever is applicable. The State Government, however, in its wisdom without acting upon such recommendation, constituted another High Level Committee in November, 2002 headed by Addl. Director General of Police, Shri C. M. Ravindran, IPS. This Committee recommended that the seniority of officers from different streams of Sikkim Police should be counted from the date of appointment or promotion in the rank of the Sub-Inspectors of Police. On consideration of the representations by the members of Vigilance and Sikkim Armed Police, the Committee recommended a separate cadre for the Police Officers upto the rank of Inspectors of Police.

28. In the year 2006, the Police Establishment Board constituted by the Government further recommended that criterion for fixation of inter-se-seniority of Sikkim Police personnel irrespective of their present ranks should be on the basis of their original seniority at the entry level post of Constable or appointment/promotion to the rank of Sub-



Inspectors. In view of the pendency of W.P. (C) No.10 of 2007 in the High Court, no decision was taken by the Government. On disposal of the Writ Petition, another Committee headed by the Chief Secretary with the Director General of Police, Home Secretary and Secretary, Department of Personnel, Adm. Reforms and Training was constituted. This Committee made the following recommendations: -

22. After detailed examination of all relevant aspects and deliberations the Committee in public interest and larger interest of the police force recommends that determination of inter-se seniority of police officers belonging to the three forces for the purpose of promotion should be on the basis of their seniority at the entry level ranks. This is considered to be the most just, fair and reasonable way of resolving the issue. The difficulty should end after a few years when all such officers in the SAP and SVP are promoted to the next higher rank. This criteria should, therefore, be operative till such time officers of the different police cadres, who were holding ranks higher to their colleagues at the entry levels at the time of amalgamation of the cadres, have all been considered for promotion to the next higher level.

23. In view of the above recommendation, the Committee further recommends that Inspectors of Sikkim Police (or even of other cadres as applicable) be deemed to have been promoted as Inspectors with effect from the date from which their colleague officers (at the entry level of Sub-Inspector) in the SAP or SVP got promoted as Inspectors. They would, however, not be entitled to any arrears of pay. Necessary Amendments to the Sikkim Police Force (Recruitment, Promotion & Seniority) Rules, 2000 may be effected appropriate. Generally, Recruitment Rules have provision giving powers to the Government for relaxation to get over such difficulties. This provision may also be included in S.P.F. (Recruitment, Promotion and Seniority) Rules, 2000."

It is on the basis of this recommendation that the State Government initially granted retrospective promotion to the private respondents vide order dated 19.01.2010 and thereafter granted retrospective seniority by amending the



Rules vide Notification No.222/GEN/DOP dated 20.01.2010 as noticed hereinabove.

29. In support of their contentions that the State has absolute authority to grant retrospective promotion/ seniority, the respondents have relied upon judgments noticed hereinafter.

(i) In ***Reserve Bank of India v. N. C. Paliwal & others : (1976) 4 SCC 939***, employees coming from non-clerical cadres were adjusted in the clerical cadre of Reserve Bank of India after seeking their option. On such adjustment the seniority was fixed by taking into consideration one third of the total non-clerical service until a cut-off date or the date of acquiring qualification for fixation of their seniority in the integrated service. The members of non-clerical cadres challenged the mode of integration and fixation of seniority. The Hon'ble Supreme Court rejected the challenge holding that non-clerical service cannot be equated with the clerical service and the two cannot be treated on the same footing, the policy to determine the seniority of non-clerical cadres with the clerical cadre on integration cannot be condemned as arbitrary or discriminatory. It was held that it is not competent to the Court to strike down such a rule on the ground that another rule would have been better or more



appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class.

(ii) In ***K. B. Shukla and Others v. Union of India & others*** : (1979) 4 SCC 673, the length of service of employees appointed by transfer was adopted as a criterion for fixing the seniority. The Hon'ble Supreme Court while upholding the criterion observed as under:-

"32. The main criterion under sub-rule (ii) of Rule 29, is the length of service rendered by the persons. Indeed, in our opinion, this is infinitely the best criterion which could ever be devised by any rule governing the conditions of a Service, to ensure fairness and equable treatment guaranteed by Article 16 of the Constitution. It was pointed out by this Court in *S. B. Patwardhan v. State of Maharashtra*, that a rule which leaves the valuable right of seniority to depend upon the mere accident of confirmation suffers from the vice of unfair discrimination which is impermissible under Articles 14 and 16 of the Constitution."

(iii) In ***Wing Commander J. Kumar v. Union of India & others*** : (1982) 2 SCC 116, it has been held that it is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned service. The Hon'ble Supreme Court upheld the criterion of fixation of seniority in the



integrated grades giving full grade to the length of service put in by the service officers in their respective parent services. The criterion so held not to be arbitrary, unjust and unreasonable. It has further been observed that the promulgation of a statutory rule governing seniority is not a quasi-judicial function. It is the exercise of a legislative power where principles of natural justice have no application.

(iv) While laying down the above principles, the Hon'ble Supreme Court relied upon a Constitution Bench judgment of the Supreme Court reported as ***R. S. Makashi & others v. I. M. Menon & others : (1982) 1 SCC 379.*** In this case, personnel drawn from different sources were absorbed and integrated in a new department. It has been held that it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of the posts should be effected. The Court further observed as under: -

"36. It is a just and wholesome principle commonly applied in such situations where persons from other departments are drafted to serve on deputation, their inter se seniority in the parent department should be respected and preserved during the period of such deputation to the new department. We, therefore, consider that the High Court was in error in striking down the proviso to Rule 7 as being violative of Articles 14 and 16 of the Constitution. "

(v) In ***Director, Lift Irrigation Corporation Ltd. & others v. Pravat Kiran Mohanty & others : (1991) 2***



SCC 295, a policy decision to amalgamate the existing cadres by re-organising and fixation of inter-se-seniority on the basis of their initial appointment vis-à-vis their scale of pay was held to be fair, reasonable and beneficial to all the employees without affecting their scales of pay or losing seniority from the date of initial appointment.

(vi) In ***Prafulla Kumar Das & others v. State of Orissa & others* : (2003) 11 SCC 614**, it has been held that the legislature or the Government of the State by adopting rules under proviso to Article 309 of the Constitution may in its discretion bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses in public interest. It was further observed that a seniority is not a fundamental right but is merely a civil right. However, it has been observed that policy could be struck down if violative of Articles 14 and 16 of the Constitution.

(vii) In ***T. Narasimhulu & others v. State of Andhra Pradesh & others* : (2010) 6 SCC 545**, it has been held that seniority of a government servant is not a vested right and that an Act of the State Legislature or a rule made under Article 309 of the Constitution can retrospectively



affect the seniority of a government servant. It has further been observed that losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion get delayed.

(viii) In ***Tamil Nadu Education Department Ministerial and General Subordinate Services Association & others v. State of Tamil Nadu & others*** : **(1980) 3 SCC 97**, it has been observed that in Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out.

(ix) In ***Om Prakash Sharma & others v. Union of India & others*** : **1985 (Supp) SCC 218**, a common seniority list of three departments was maintained wherein appellant in the case was shown senior to the private respondents on the basis of their entry into the cadre of services. Later this department was separated and a separate seniority list was maintained. Because of separate seniority list, some of the respondents got accelerated promotion. After 23 years, the separated departments were re-amalgamated and inter-se-seniority of the members of the merged departments was restored. The Hon'ble Supreme Court upheld the action of the respondents as they



initially belonged to the same cadre of service and on amalgamation seniority was held to be rightly restored.

(x) In **K. S. Vora & others v. State of Gujarat & others : AIR 1987 SC 2348**, the State decided to merge four grades of the Subordinate Service and by framing rules adopted the length of service in the particular grade and protected the rank then held by every member of the service notwithstanding alteration of seniority on the new basis. The Hon'ble Supreme Court upholding the rules observed as under: -

"4. The scheme of this rule protected the rank then held by every member of the service notwithstanding alteration of seniority on the new basis. This, therefore, made it clear that accrued benefits were not to be interfered with. To that extent the 1977 Rules were not retroactive."

It was further held that Rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made.

(xi) In **Kerala State Electricity Board v. N. Sukesen & ors. : (1996) 9 SCC 397**, initially the Kerala State Electricity Board had one common establishment. A separate Secretarial Establishment was formed with effect



from 01.04.1964. However, on 14.01.1981 the separate status of the Establishment was brought to an end and again a common cadre was established. Seniority was fixed on the basis of the length of service in the cadre/category concerned at the time of integration. The Hon'ble Supreme Court upheld the rule of seniority.

(xii) In **Kerala Magistrates (Judicial) Ass. & others v. State of Kerala & others : (2001) 3 SCC 521**, it has been held that if due to amalgamation of services some senior may suffer some loss but such loss is the usual consequence of integration. Rule cannot be struck down unless arbitrary or mala fide.

30. To the contrary, the petitioner has placed reliance upon the following Judgments:

(i) In **Nirmal Kumar Choudhary & others v. State of Bihar & others : 1988 (Supp) SCC 107**, the Hon'ble Supreme Court directed fixation of inter-se-seniority of the merged cadre on the basis of length of service in their respective departments in a common grade.

(ii) In **Union of India & others v. Tushar Ranjan Mohanty & others : (1994) 5 SCC 450**, candidates belonging to Scheduled Caste and Scheduled Tribe were



promoted from Grade-IV to Grade-III on the basis of administrative instructions though statutory rules did not provide for any such reservation in promotion. A general category candidate, who was senior to the reserved category officials, challenged the promotion before the Tribunal. This petition was allowed and he was granted promotion from the date reserved category candidates were promoted and also placed above them in the Indian Statistical Service. Government of India amended the rules retrospectively making a provision for reservation in promotion as well. The Hon'ble Supreme Court while examining the validity of the retrospective amendment and impact on the seniority of the reserved category candidates, held as under: -

"14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify and arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation."

(iii) In **Uday Pratap Singh & others v. State of Bihar & others : 1994 Supp (3) SCC 451**, two cadres of Bihar Finance Service consisting of the Senior Branch and Junior Branch were ordered to be merged. Some direct appointments were made to the Senior Branch on 12.05.1974 and 25.5.1974 respectively. The merger was made effective with effect from 01.04.1974. By a separate



executive order the officers belonging to the Junior Branch, which was in fact a feeding cadre, were granted retrospective appointment to the Senior Branch with effect from 01.04.1974, i.e. the date prior to the appointment of the direct recruits in the Senior Branch. The members of the Junior Branch, who were granted retrospective promotion, claimed seniority in the merged cadre over the direct recruits of the Senior Branch. Their claim was accepted by the Government. However, the Patna High Court allowed the Writ Petition challenging their seniority. While considering the controversy, the Hon'ble Supreme Court observed as under:-

"6. In the present case it has to be kept in view that the contesting respondents were directly recruited and appointed in the Senior Branch on 12-5-1974 and 25-5-1974 respectively, while the appellants were appointed on 2-11-1975 in the merged cadre. It is true that their order of appointment purports to give them appointment retrospectively from 1-4-1974 but such effect cannot be given so as to destroy the seniority rights of the writ petitioners, respondents herein, who were inducted as direct recruits in the Senior Branch prior to 2-11-1975.
....."

(iv) In ***State of Bihar & others v. Akhouri Sachindra Nath & others*** : 1991 Supp (1) SCC 334, it has been held that no person can be promoted with retrospective effect from the date when he was not born in the cadre. The relevant observations are as under: -

"12. In the instance case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given



seniority in the service of Assistant Engineers over respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law respondents 6 to 23 cannot be made senior to respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable."

31. From the above judgments, following proposition of law can be safely and conveniently extracted: -

(i) the State as an employer has authority and power to determine the seniority, which, *inter alia*, includes to give retrospective operation to the seniority by law. The only caveat on such exercise of authority is that it should be fair, transparent, non-arbitrary or non-discriminatory and should not be actuated by malafides.

The action of the official respondents and the impugned orders are to be tested on the touch stone of the above proposition.

32. Apart from the above referred judgments, it is useful to notice two Constitution Bench judgments of the Apex Court, which were relied upon in various subsequent judgments referred to above. In **B. S. Yadav & others v. State of Haryana & ors. : 1980 (Supp) SCC 524**, on the



question of retroactive operation of law, the Constitution Bench observed as under: -

"76. Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case. No such nexus is shown in the present case on behalf of the State Government."

In **State of Gujarat & anr. v. Raman Lal Keshav Lal Soni & ors. : (1983) 2 SCC 33**, a Constitution Bench of the Apex Court again relying upon the above Constitution Bench judgment in **B.S. Yadav (supra)**, considered the question of retrospective effect of law to determine the service rights as existed at the time of the amendment of the law. The Hon'ble Supreme Court observed as under: -

"52. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

33. The petitioner has challenged the Rule 9(iv)(b) of Sikkim Police Force (Recruitment, Promotion and Seniority)



Rules, 2000 as inserted by Rule 2 of the Amendment Rules, 2009 brought into force vide Notification No.222/GEN/DOP dated 20.01.2010. Under these Rules, inter-se-seniority of Police Inspectors of Sikkim Police, Sikkim Vigilance Police, Sikkim Armed Police and Indian Reserve Battalion on the date of amalgamation of the cadre for the purpose of their promotion to the rank of Deputy Superintendent of Police has been determined on the basis of their date of appointment to the entry level of Sub-Inspector, meaning thereby that the seniority of Inspectors has been determined at the feeding cadre of Sub-Inspectors irrespective of the entry/appointment of the persons as Inspectors on substantive basis. The seniority was required to be determined in the cadre of Inspectors on amalgamation of the cadres of different services. Indubitably, the cadre of Inspectors is higher than the Sub-Inspectors. Thus, determination of seniority on the basis of their initial appointment in the lower cadre in respective services prior to merger seems to be totally uncalled for, arbitrary, discriminatory, illegal and unconstitutional. It goes without saying that seniority has relation to a class, category, cadre or grade of a service that means the persons belonging to same status and not from different categories. The only argument of the respondents is that while the persons

Q



recruited to the Sikkim Police could be promoted over a longer period of time as Inspectors as compared to the persons recruited to the Sikkim Vigilance Police and Sikkim Armed Police where the promotional avenue was better and earlier than the Sikkim Police.

34. It must be born in mind and is an admitted position on record that prior to merger, Sikkim Police, Sikkim Vigilance Police and Sikkim Armed Police were different and distinct services and were established under different enactments, namely, the Sikkim Police Act, 1969 and their service conditions were governed and regulated by the Sikkim State Police Service (Recruitment) Rules, 1976; the Sikkim Vigilance Police Act, 1978 and service conditions of its members were regulated by the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981; and the Sikkim Armed Police Force Act, 1981 and service conditions of its members were regulated by the Sikkim Armed Police Force (Recruitment, Promotion and Other Conditions of Service) Rules, 1989, as amended from time to time. All the three Services had separate cadres having separate seniority and separate promotional streams. The persons recruited as Constables and Sub-Inspectors in their respective services were promoted from time to time on availability of vacancy(ies) in their respective services.



There had been no linkage or bond amongst these services, the services being totally distinct and separate.

35. Justice N. G. Das (Retd.) Commission recommended integration of the three services at the level of each cadre of services. The recommendation having been accepted, common rules were framed for the amalgamated Police Force vide Notification dated 08.09.2000 published in the Government Gazette dated 11.09.2000. Thus the common service came to be constituted with effect from 11.09.2000. From the perusal of Rule 4, which deals with the initial constitution of the amalgamated service, it is apparent that the integration has taken place at each cadre of services. In the present case, the relevancy is in respect to the cadres of Sub-Inspector and Inspector. The integration thus resulted in commonality of cadre of the Inspectors drawn from the three services and similar is the position at the level of Sub-Inspectors. Neither the recommendation of the Commission nor the rule suggest integration between Sub-Inspector of one service and Inspector of other service, which is otherwise impermissible in law and offends Articles 14 and 16 of the Constitution.

36. The petitioner having been appointed as Inspector in Vigilance Police on 26.09.1995, was taken as Inspector at



the time of merger whereas all the private respondents except respondent No. 21 were promoted as Inspectors much later than the petitioner. Respondents No. 7 and 8 were appointed as Inspectors on confirmed basis on 07.02.2000, i.e. after more than 4 (four) years of petitioner's appointment as Inspector. Respondents No. 9 to 20 were promoted as Inspectors on officiating basis on 28.02.2001, whereas the respondents No. 22 to 28 were promoted as Inspectors on 26.11.2002 and all the respondents No. 9 to 28 were confirmed as Inspectors on 29.08.2008. This clearly indicates that at the time of merger of cadres except respondents No. 7, 8 and 21, all other private respondents were in the substantive ranks of Sub-Inspectors. By virtue of the rule 4, they could only be adjusted in the amalgamated service in the cadre of Sub-Inspectors and not as Inspectors. Even at the level of the Inspectors, the petitioner was senior to respondents No. 7 and 8 though respondent No. 21 was senior to him.

37. Another order challenged by the petitioner is No. 02/PHQ/2010 dated 19.01.2010, whereby respondents 7 to 20 have been promoted as Inspectors with effect from 04.01.1994 and respondents 21 to 28 with effect from 26.09.1995 respectively. This retrospective promotion was again granted on the same basis, i.e. promotions awarded to



the Sub-Inspectors in their respective services with different time frames. It is useful to notice the relevant extract from the preamble of this order which is the sole basis for granting retrospective promotion:-

"3. Prior to issue of this Notification, there was no uniformity in promotions, as separate islets of cadres awarded promotions in their respective units depending upon vacancies. While Sub-Inspectors of the Sikkim Police took longer time to get promotions to the rank of Inspector, their counterparts in Sikkim Armed Police, India Reserve Battalion and Sikkim Vigilance Police got their promotions rapidly.

4. For want of clear rules in the Sikkim Police Force (Recruitment, Promotion & Seniority) Rules, 2000, anomaly crept in while integrating and fixing the inter-se-seniority of Police Inspectors in the amalgamated cadre. This was examined in depth by the Committee of Senior Police Officers constituted by the Director General of Police and after examining all relevant aspects it was recommended that inter-se-seniority at the level of Sub-Inspectors be the determining criterion for fixing inter-se-seniority of Police Inspectors in the amalgamated cadre. The recommendation was endorsed by the Police Establishment Board in its meeting held on 2nd and 4th July, 2007. This was approved by the State Government on 11/4/2008. However, its implementation was kept in abeyance due to pendency of the Writ Petition (C) No.10 of 2007 in the matter of Adup Tshering Bhutia -vs- State of Sikkim in the High Court of Sikkim."

38. From the reports of the Committees and premises of the impugned order quoted above, it appears that the Committees were influenced and persuaded by the only factor that the members of Sikkim Police Force, prior to their merger, had fewer/lesser chances of promotion and their promotions were delayed on account of non-availability of promotional vacancies in the cadre of Inspectors in their service. Whereas in Sikkim Vigilance Police and Sikkim Armed Police, services Sub-Inspectors got promotions earlier



than their counterparts in the Sikkim Police Force. With a view to remove so-called anomaly, the Committees devised the method of fixing the seniority of Inspectors by taking into consideration initial appointment/recruitment at the level of Sub-Inspectors. While formulating this opinion the Committees though comprising of senior officers and bureaucrats totally ignored the basis and fundamental principles of seniority. It seems that Sikkim Police Force having a much larger cadre, its members were able to persuade the Committee members to devise this method which was to their advantage. The fallacy of the methodology adopted by the Committee is writ large and manifest on the face of the reports and paragraph 3 of the impugned order dated 19.01.2010. The Committees were either oblivious of or unwittingly ignored the fact that the Sikkim Police Force, Sikkim Vigilance Police and Sikkim Armed Police were different services and they had separate seniorities and separate promotional avenues. Thus, drawing a comparison or parity of promotional avenues amongst cadres of three different services was/is impermissible in law. The Government without due application of mind accepted the reports of the Committees, particularly, the last report headed by the Chief Secretary and granted retrospective promotion to the private



respondents without there being any nexus or valid reason. Retrospective promotion is permissible where an employee was denied his due promotion on account of some intervening circumstances like pendency of disciplinary/ criminal proceedings, illegal promotion to juniors any interim direction of the Court etc. Retrospective promotion cannot be granted merely to upgrade the status to bring them at par with the members of another service when there was no commonality or linkage between such services. Right to promotion in any service depends upon the availability of promotional vacancies. In different services, promotion chances may be different but that cannot be a ground for claiming equality in law nor the members of two services even if have similar cadres can complaint inequality having lesser or bleak promotional avenues or claim parity to seek promotion irrespective of the promotional vacancies. Parity amongst unequals is itself transgression of rule of equality enshrined under Articles 14 and 16 of the Constitution of India. Admittedly, the private respondents were promoted retrospectively with benefit of service as Inspectors ranging from 6 (six) years to 14 (fourteen) years and 7 (seven) months vide impugned order dated 19.01.2010 without any vacancy or valid reason. They were never denied their promotion unjustly, illegally or on account of any



supervening event affecting their promotional right in their respective services. Thus the basis for granting them retrospective promotion after the merger of the cadres is manifestly illegal, *per se*, unconstitutional being violative of Articles 14 and 16 of the Constitution of India. Subsequent amendment of the rules suffers on the same principles. Neither the rule nor the reply or even the reports of the Committees disclose any nexus much less a valid nexus justifying a retroactive amendment of the rule of seniority. The sum and substance of the above discussion leads to the following conclusion: -

The State as an employer has authority to determine the seniority according to rules and also to fix the seniority giving it retrospective operation by law. Such action of the State is liable to be interfered or struck down only if it is found to be arbitrary, discriminatory and actuated by malafide. However, the retrospective action is not justified to negate any accrued or vested right, particularly, where such action affect the right acquired over a longer period of time.

39. Other orders under challenge are promotion orders of private respondents from the post of Inspectors to the post of Deputy Superintendent of Police from time to



time. In view of the promotion of the petitioner during pendency of this petition, the challenge to these promotion orders can only be considered to the extent of entitlement of the petitioner for promotion from the date the private respondents were promoted, hence their promotions as such need not be interfered.

40. In **Reserve Bank of India (supra)**, the Hon'ble Supreme Court approved the fixation of seniority by taking only $1/3^{\text{rd}}$ of the non-clerical service with the clerical service. It was thus in the opinion of the Hon'ble Supreme Court that the merger is between two unequal cadres and thus the rule of seniority adopted by the Bank was held to be not arbitrary or discriminatory. In **K. B. Shukla & ors (supra)**, it has been held that length of service is "infinitely the best criterion which could ever been devised by any rule governing the conditions of a Service" to determine the seniority. In all other judgments, the length of service in a particular cadre has been approved as the best criterion for determining the seniority.

41. Apart from the ratio of above noticed judgments, the present case, in fact, is squarely covered by the Constitution Bench judgment of the Hon'ble Supreme Court in **State of Gujarat & Anr. (supra)**.



42. Applying the above ratio, the right of the petitioner and private respondents stood crystallized on the date of their substantive promotions as Sub-Inspectors/ Inspectors of Police in their respective services and subsequently on the date of merger which became effective on 11.09.2000. On this date, admittedly petitioner was confirmed in the cadre of Inspectors with effect from 26.09.1995 whereas the private respondents except respondent No.21, 7 and 8 were substantively holding the posts of Sub-Inspectors. Respondents 7 and 8 were appointed as Inspectors on confirmed basis on 07.02.2000 and respondents 8 to 28 earned their officiating and substantive appointments in the years 2001, 2002 and 2008 respectively, i.e. much later than merger of the services and thus by no stretch of imagination, the private respondents except respondent No.21 could be granted benefit of retrospective promotion prior to the petitioner or even at par with him or be granted seniority over and above him. The action of State in passing the impugned order dated 19.01.2010 granting retrospective promotion as also the amendment dated 20.01.2010 to Rule 9 fixing the seniority of these Inspectors at the level of Sub-Inspectors tends to negate the accrued and vested right of seniority after a long



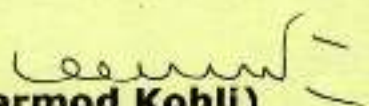
period of time, is discriminatory in nature result of arbitrary exercise of jurisdiction, unconstitutional, illegal and violative of Articles 14 and 16 of the Constitution of India.

43. In this view of the matter, this petition is allowed. Notification No. 2/PHQ/2010 dated 19.01.2010 (Annexure P-27) granting retrospective promotion to the private respondents and the amended Rule 9(iv)(b) and other related amendments to the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 introduced vide Notification No.222/GEN/DOP dated 20.01.2010 (Annexure P-28) are hereby quashed/struck down as unconstitutional. Private respondents shall be deemed to have been promoted as Inspectors from the dates of their substantive promotion i.e. respondents No.7 and 8 on 07.02.2000 and respondents 9 to 17, 19 to 23 and 26 to 28 on 29.08.2008 (respondents 18, 24 and 25 having been deleted vide order dated 01.12.2011). In view of the quashment of amended Rule 9(iv)(b) and consequential amendments in Notification dated 20.01.2010, the seniority of the petitioner and private respondents be re-fixed with effect from the dates of their substantive appointment as Inspectors in the amalgamated force.



44. Petitioner has already got promotion as Deputy Superintendent of Police vide order dated 23.02.2012 whereas he was entitled to be promoted with effect from the date the first promotion was granted to any of the private respondents. Resultantly, it is directed that the petitioner shall be promoted as Deputy Superintendent of Police with effect from 03.05.2010 when respondents No.7 to 10 were promoted. In view of the retirement of the petitioner, he shall be entitled to all financial and other consequential benefits of such promotion.

45. Petitioner shall also be entitled to cost of Rs.20,000/- to be shared by State Rs.10,000/- and private respondents Rs.10,000/- equally.


(Permod Kohli)
Chief Justice
10.10.2012

Approved for Reporting: Yes/No ✓
Internet: Yes/No ✓