

GAHC040008902021



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**Case No. : WP(C)/297/2021**

1. Shri Moli Tatu,  
Aged about 53 years,  
S/O Late Semmo Riba,  
Permanent Resident of village Dali,  
P.O./P.S.-Dali, Leparada District, Arunachal Pradesh
  
2. Shri Jomba Loya,  
Aged about 52 years,  
S/O Late Tojom Loya,  
Permanent resident of Village-Kabu,  
P.O./P.S.-Aalo, West Siang District, Arunachal Pradesh
  
3. Shri Itum Naso,  
Aged about 47 years,  
S/O Late Toi Naso,  
Permanent Resident of Logum Jini,  
P.O./P.S.-Aalo, West Siang District, Arunachal Pradesh

.....**Petitioners**

-versus-

1. The State Arunachal Pradesh

Represented by the Chief Secretary Government of  
Arunachal Pradesh, Itanagar-cum-Chairman,  
Departmental Promotion Committee held on 07.09.2020

2. The Commissioner/Secretary (PHE&WS)  
Government of Arunachal Pradesh, Itanagar

.....***Respondents***

**ADVOCATES**

For the Petitioners : R. Saikia  
: L. Nochi  
: L. Bam  
: H. Ete  
: B. Taipodia  
: I. Bam  
: Y. Linggi

For the State Respondents : R.H. Nabam, Addl. A.G.

**BEFORE**  
**HON'BLE MR. JUSTICE KARDAK ETE**

Date of hearing : **22.06.2023**

Date of judgment : **05.07.2023**

## **JUDGMENT & ORDER**

(CAV)

Heard Mr. R. Saikia, learned counsel for the petitioners and Mr. R.H. Nabam, learned Additional A.G for the State Respondents.

**2.** By this writ petition, the petitioners, three (3) in numbers have challenged the recommendation of Departmental Promotion Committee (DPC) dated 07.09.2020 and the consequent order No. Sectt/PHE(Estt)-161/2012 Pt-I/631 dated 05.10.2020 whereby services of the petitioners as *adhoc* Assistant Engineer (Civil) in Public Health Engineering & Water Supply Department ("PHE&WS" in short) have been regularized w.e.f. the date of DPC i.e. 07.09.2020. The petitioners have prayed for a direction for regularization/promotion of the services of the petitioners as Assistant Engineer (Civil) in PHE&WS Department with retrospective effect w.e.f. the date of *adhoc* promotion i.e. 09.05.2006 in respect of petitioner No. 1 and 06.06.2006 in respect of petitioner Nos. 2 & 3 and for grant of consequential benefits.

**3.** The petitioners are working as Assistant Engineer (Civil) [AE(C) in short] in the Department of PHE&WS, Government of Arunachal Pradesh. The petitioner Nos. 1 & 2 are Graduates in Bachelor of Engineering (Civil) and they were initially selected and appointed as Junior Engineers (JE in short) in the erstwhile Rural Works Department, Government of Arunachal Pradesh vide order dated 10.06.1994. Thereafter, on the bifurcation of the Department of Rural Works and after creation of Public Health Engineering Department (PHED) the petitioner Nos. 1 & 2 were absorbed with the Department of PHE. The petitioner No. 3 is also a Graduate in Bachelor of Engineering (Civil) and was appointed as JE in PHED vide order dated 29.08.1996.

**4.** The Government of Arunachal Pradesh vide order No. PHE/Sectt-04/96 dated 13.03.2001, had regularized the services of twenty-one (21) AEs under PHE Department with

retrospective effect from the date of *adhoc* promotion as AE. The petitioners have requisite length of service in the cadre of JE in terms of Recruitment Rules, 1996 as amended in 2005. On vacancies that arose against the promotional quota, the Government of Arunachal Pradesh promoted the petitioners to the post of AE(C) in PHE&WS Department on *adhoc* basis with scale of pay and other benefits as that of regular AEs on the vacancies against the promotional quota. The petitioner No. 1 was promoted as AE(C) vide order dated 09.05.2006 and petitioner Nos. 2 & 3 were promoted as Assistant Engineer on *adhoc* basis on 06.06.2006 ( issued on 07.06.2006 ) with the scale of pay of AE(C) plus other allowances permissible under the Rules from time to time. The petitioner No. 1 was promoted as AE on *adhoc* basis in the existing vacancy which arose due to retirement of one Shri Pankajakshan on 30.04.2006. The petitioner No. 2 on the existing vacancy of one Shri Toney Ete on 17.05.2006 and the petitioner No. 3 was promoted on the existing vacancy that arose due to promotion of one Shri P.K. Dey on 29.05.2006.

**5.** It is the case of the petitioners that as per the Recruitment Rules, 1996, the petitioner Nos. 1 & 2 were eligible for being considered for promotion as far back as on 26.06.1999 and 18.07.1999 in terms of the gradation list dated 14.05.1999 and the petitioner No. 3 became eligible on 06.09.2001. However, no Departmental Promotion Committee ("DPC" in short) was held from 1999 to 2000. The DPC was held in the year 2001 pursuant to which juniors of the petitioner Nos. 1 & 2 were promoted as AE(C) and the petitioner Nos. 1 & 2 were deprived of their right to be considered for promotion. Being aggrieved petitioner Nos. 1 & 2 approached this Court by filing the writ petition being WP(C)/292(AP)/2001 whereby the Hon'ble Court has set aside the order dated 22.05.2001 and 21.08.2001 vide order dated 25.06.2003 with a direction to the State respondents to constitute a DPC afresh for reviewing the cases of promotion of the petitioners alongwith those persons who falls within the zone of consideration for promotions. Further it was directed that the State respondents shall prepare year-wise panel depicting number of vacancies available in the promotional vacancies of AEs every year commencing from 1997 till 2001 and consider the cases of persons concerned in accordance with the panels which shall be so prepared. However, no year-wise panel was prepared nor any DPC meeting was conducted for consideration of the cases of the petitioners for promotion to the post of AE(C), PHE&WS

Department.

**6.** The Department vide Memorandum No. PHE/Sectt-7/2002 dated 23.12.2009, published a tentative Common Seniority List of AE under PHE&WS Department wherein the name of the petitioner No. 1 appeared at serial No. 76, petitioner No. 2 at serial No. 77 and petitioner No. 3 at serial No. 78. Though the petitioners were not regularly promoted due to non-sitting of DPC meeting or preparation of year-wise panel the names of the petitioners were in the seniority list as they were working as AE(C) with scale of pay on *adhoc* basis.

**7.** The authorities in the Department of PHE&WS, on several occasions issued a letter to the Chief Engineer, PHE&WS Department for submission of Vigilance Clearance of Officiating/*adhoc* AEs in the Department for placing the same before the DPC for regularization of the services which was placed before the concerned authority as directed, however, no DPC meeting was conducted since so many years.

**8.** By a Notification No. PHED-II/CE/Coord/03/2010 dated 03.03.2015, a final gradation list of JEs(C) under the Department were published wherein the petitioners' names appeared at serial Nos. 56, 57 & 62. The petitioners state that in the said gradation list of JEs(C) the officers from serial Nos. 1 to 55 have either been promoted to the post of AE in PHE&WS Department on regular basis or retired from Government services, therefore, the petitioners are senior-most JEs in the Department. All along the petitioners have been granted all benefits as that of regular AEs since the time of *adhoc* promotion as AE(C) in the Department including MACPs. The petitioners were in great expectation that the *adhoc* promotion will be regularized in due course of time as there were three (3) clear vacancies of AE(C) since the year 2006 in the Department wherein the petitioners were promoted though on *adhoc* basis on being eligible in terms of the Recruitment Rules holding the field but no DPC was held until the DPC dated 07.09.2020.

**9.** The Government of Arunachal Pradesh on having serious concern over the delay in convening DPC for promotion of the Government servants by authorities had issued various Office Memorandums ("OMs" in short) from time to time, i.e. OM dated 16.06.2016, 15.02.2017, 18.10.2007 and 31.05.2018 directing for timely and regular conduct of DPC

meetings to all the Heads of the Department and to ensure that the DPC meetings be held atleast once in every six (6) months.

**10.** The petitioners being aggrieved of non-convening of DPCs for regularization of their *adhoc* AE(C) promotions against clear existing vacancies since the year 2006 wherein the petitioners were promoted on *adhoc* basis as AE(C) in the Department, submitted several representations for convening of DPC for consideration of regularization of their *adhoc* services as AE as they were promoted though on *adhoc* basis on clear vacancies in 2006.

**11.** Ultimately DPC was held on 07.09.2020 after nearly two (2) decades for consideration for regularization/promotion of the case of the eligible senior-most JEs who were promoted as AEs on *adhoc* basis in the PHE&WS Department. For consideration of the DPC, background note was prepared which is reproduced herein below:-

“BACKGROUND NOTE FOR DEPARTMENTAL PROMOTION COMMITTEE TO CONSIDER REGULARISATION OF ADHOC APPOINTMENT OF ASSISTANT ENGINEERS UNDER PHE & WS DEPARTMENT

*In the exigencies of Government service, 23 (Twenty Three) senior most Junior Engineers under the Department of Public Health Engineering & Water Supply were promoted to the post of Assistant Engineers on adhoc basis against the following vacancies:-*

*1) Vacancy arose due to promotion/superannuation of the following AEs:*

*i) Superannuation of Shri C. Pankajakshan*

*ii) Promotion of Shri Toney Ete*

*iii) Promotion of Shri P.K. Dey*

*iv) Promotion of Shri Marter Riba*

*v) Promotion of Shri A.B. Gohain*

*vi) Promotion of Shri Subat Pertin*

*vii)Promotion of Shri Niapum Konia*

*viii)Promotion of Shri Bimal Welly*

*ix)Promotion of Shri Radhe Raja*

*x)Superannuation of Shri P.S. Varghese*

*xi)Promotion of Shri Binken Namuk*

- xii) Creation of Anini PHE&WS Sub-Division  
 xiii) Creation of Rupa PHE&WS Sub-Division  
 xiv) Due to death of Late Koopur Natung  
 xv) Promotion of Shri N.K. Hazarika  
 xvi) Superannuation of Shri S.K. Mukherjee  
 xvii) Superannuation of Shri K.K. Pal  
 xviii) Superannuation of Shri K.C. Das  
 xix) Superannuation of Shri Y.K. Singh  
 xx) Promotion of Shri Bamang Tadh  
 xxi) Promotion of Shri Murre Lingi  
 xxii) Promotion of Shri Marmik Rina  
 xxiii) Promotion of Shri P.D. Chukla

2) The details of the officers appointed as Assistant Engineer (PHE&WS) on adhoc basis against the above vacancies:

| Sl. No | Name of the officer         | Category | Date of Birth | Sl.No. in S/List | Date of appointment as JE (PHE & WS) on regular | Date of joining as AE on adhoc basis |
|--------|-----------------------------|----------|---------------|------------------|-------------------------------------------------|--------------------------------------|
| 1      | Sri Moli Tatu, AE (ad-hoc)  | APST     | 5/3/1969      | 56               | 29/6/1994                                       | 9/5/2006                             |
| 2      | Sri Jomba Loya, AE (ad-hoc) | APST     | 7/3/1970      | 57               | 18/7/1994                                       | 7/6/2006                             |
| 3      | Sri Kaso Borang AE (ad-hoc) | APST     | 10/2/1974     | 61               | 6/9/1996                                        | 7/6/2006                             |
| 4      | Sri Itum Naso, AE (ad-hoc)  | APST     | 28/2/1974     | 62               | 6/9/1996                                        | 20/11/2007                           |
| 5      | Sri Mayan Kino, AE (ad-hoc) | APST     | 7/6/1969      | 64               | 12/9/1996                                       | 20/11/2007                           |
| 6      | Sri R.J. Longchang          | APST     | 14/8/1971     | 65               | 10/9/1996                                       | 26/8/2009                            |

|    |                                  |      |           |    |           |            |
|----|----------------------------------|------|-----------|----|-----------|------------|
|    | , AE (ad-hoc)                    |      |           |    |           |            |
| 7  | Sri Bomjom Ado, AE (ad-hoc)      | APST | 2/11/1970 | 66 | 3/9/1996  | 26/8/2009  |
|    |                                  |      |           |    |           |            |
| 8  | Sri Bhupen Khamyang, AE (ad-hoc) | APST | 25/4/1973 | 67 | 6/9/1996  | 16/8/2010  |
|    |                                  |      |           |    |           |            |
| 9  | Sri Rana Tok, AE (ad-hoc)        | APST | 9/2/1972  | 68 | 4/9/1996  | 16/8/2010  |
|    |                                  |      |           |    |           |            |
| 10 | Sri Najing Jamoh, AE (ad-hoc)    | APST | 4/4/1972  | 69 | 7/9/1996  | 6/6/2011   |
|    |                                  |      |           |    |           |            |
| 11 | Sri Sengom Takhnyo, AE (ad-hoc)  | APST | 22/6/1974 | 70 | 20/9/1996 | 6/6/2011   |
|    |                                  |      |           |    |           |            |
| 12 | Sri Tumba Ingo, AE (ad-hoc)      | APST | 1/3/1973  | 73 | 28/9/1996 | 6/6/2011   |
|    |                                  |      |           |    |           |            |
| 13 | Sri Bengia Sankio, AE (ad-hoc)   | APST | 6/12/1972 | 74 | 2/9/1996  | 6/6/2011   |
|    |                                  |      |           |    |           |            |
| 14 | Sri Gobo Kato, AE (ad-hoc)       | APST | 1/8/1971  | 75 | 7/9/1996  | 8/8/2012   |
|    |                                  |      |           |    |           |            |
| 15 | Sri Tadang Tamut, AE (ad-hoc)    | APST | 14/6/1971 | 76 | 30/8/1996 | 8/8/2012   |
|    |                                  |      |           |    |           |            |
| 16 | Sri Milang Changmi, AE (ad-hoc)  | APST | 22/4/1971 | 77 | 4/9/1996  | 15/12/2014 |
|    |                                  |      |           |    |           |            |
| 17 | Sri Nabam Chada, AE (ad-hoc)     | APST | 13/4/1975 | 78 | 7/9/1996  | 15/12/2014 |
|    |                                  |      |           |    |           |            |

|    |                                             |      |           |    |            |            |
|----|---------------------------------------------|------|-----------|----|------------|------------|
| 18 | Sri Doge<br>Kamduk,<br>AE (ad-<br>hoc)      | APST | 16/6/1973 | 81 | 13/9/1996  | 20/10/2015 |
| 19 | Sri Jamnya<br>Jini, AE<br>(ad-hoc)          | APST | 1/3/1969  | 85 | 1/10/1996  | 20/10/2015 |
| 20 | Sri Muntu<br>Khimhum<br>AE (ad-<br>hoc)     | APST | 1/7/1973  | 87 | 26/9/1996  | 20/10/2015 |
| 21 | Sri<br>Jangbey<br>Gombu,<br>AE (ad-<br>hoc) | APST | 10/6/1969 | 89 | 13/10/1996 | 20/10/2015 |
| 22 | Sri Tai<br>Seniung,<br>AE (ad-<br>hoc)      | APST | 10/6/1973 | 90 | 17/9/1996  | 20/10/2015 |
| 23 | Sri Taya<br>Doni, AE<br>(ad-hoc)            | APST | 1/8/1974  | 91 | 20/11/1996 | 20/10/2015 |

*The Serial No. at 58, 59, 60, 63, 71, 72, 79, 80, 82, 83, 84, 86, 88 of the Seniority List have not been included in the DPC Eligibility List because they belong to non APST category and no regular vacancies against non APST quota available to accommodate them as per the existing reservation policy.*

**[2] RULE POSITION.**

*The appointment to the post of Assistant Engineer (PHE&WS) is governed by the method as specified vide Column No. 11 and 12 of Schedule of the Recruitment Rules, 1996 for the post of AE/ASW (PHE&WS) Department, Arunachal Pradesh Service Group-B published vide Government Notification No. PHED-1 dated 12/08/1996.*

| Column No. | Name of Post | Method of Appointment | Eligibility for Promotion |
|------------|--------------|-----------------------|---------------------------|
| 01         | 02           | 03                    | 04                        |
| 1          | ASSISTANT    | a) 50% by promotion   | By promotion from amongst |

|  |                      |                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                 |
|--|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | ENGINEER<br>(PHE&WS) | failing which by transfer on deputation<br>b) 50% by direct recruitment on the basis of written examination and viva-voce conducted by the APPSC.<br>80% of the posts meant for direct recruitment shall be reserved for APST. | the TAs and JEs of PHED having 3 (three) years regular service as TA and 8 (eight) years regular service as JE respectively to passing of Departmental professional examination in accounts.<br>Degree holder (BE) APST JEs are eligible for promotion to the post of TA on completion of 2 (two) years regular service and 5 (five) years regular service for promotion to the post of AE/ASW. |
|  |                      |                                                                                                                                                                                                                                | By transfer and deputation from officers of Central/State Governments holding analogous post from TAs and JEs having 3 (three) years regular service in the scale of pay of Rs. 1,400-2,300/= pm respectively possessing educational qualification and experience as prescribed under Column 8 of the draft RPs.                                                                                |

| Sl. No. | Name of the incumbents | Year of departmental examination passed in accounts | Vide order No. & date                                |
|---------|------------------------|-----------------------------------------------------|------------------------------------------------------|
| 1       | Shri Moli Tatu         | 25/6/2000                                           | PHED-1/41/97 dated 17/7/2000                         |
| 2       | Shri Jomba Loya        | 25/6/2000                                           | PHED-1/41/97 dated 17/7/2000                         |
| 3       | Shri Itum Naso         | 25/6/2000                                           | PHED-1/41/97 dated 17/7/2000                         |
| 4       | Shri Bomjom Ado        | 4/7/2006                                            | CE(W/Z)/ACE(C&T)/E-III/25/06/2604-44 dated 25/8/2006 |
| 5       | Shri Bhupen Khamyang   | July-August 1996                                    | No. 16/3/95-Exam dated 18/11/1996                    |
| 6       | Shri Taya Doni         | 25/6/2000                                           | PHED-1/41/97 dated 17/7/2000                         |

### [3] ZONE OF CONSIDERATION

According to the Government of India, Department of Personnel and Training's OM No. 22011/190 Estt (D) dated 12.10.1990 and 22<sup>nd</sup> April, 1992, the normal size of zone of consideration for filling up of 23 (twenty three) vacancies in Assistant Engineer, (PHE&WS) from the feeder cadre or Junior Engineer (PHE & WS) is 38 (i.e.  $23 \times 1.5 = 24.5 + 3 + 37.5$ , rounded as 38). However, in the instant proposal

is regularization of adhoc service of 23 (twenty three) Assistant Engineers (PHE & WS) as shown in Table above, those who have already completed more than 20 to 25 years in the feeder cadre of JEs and holding the post of Assistant Engineers on adhoc basis since last 4 to 12 years against clear vacancy.

**[4] BENCH MARK**

As per the existing guidelines, the Bench Mark for promotion from the feeder cadre of Junior Engineer (PHE & WS) to Assistant Engineer (PHE & WS) which is in "Level 10 of Pay Matrix – of Rs. 56,100 – 1,77,500 per month, is "VERY GOOD"

**[5] SENIORITY LIST**

The Seniority List of Junior Engineer (PHE & WS) as on August 2011 published on 20/3/2015 showing name (s) of Junior Engineers (PHE & WS) indicating date of their appointment in present grade etc, is

the latest and currently in use. Extract of the same pertaining to Assistant Engineer (PHE & WS) is shown below:

| Sl. No | Name of the Officer                                                                                                                                                                                     | Senior No. in Seniority List | Source of Rectt. & year | Date of Birth | Date of joining as JE | Date of apptt as AE on regular basis | No of years completed as Asstt. Engineer | Date of adhoc appointment |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------|---------------|-----------------------|--------------------------------------|------------------------------------------|---------------------------|
| 01     | 02                                                                                                                                                                                                      | 03                           | 04                      | 05            | 06                    | 07                                   | 08                                       | 09                        |
|        | The officers vide Serial No. 01 to 55 have either been promoted to the post of Assistant Engineer (PHE & WS) on regular basis or retired from Government service on attaining the age of superannuation |                              |                         |               |                       |                                      |                                          |                           |
| 01     | Shri Moli Tatu, AE                                                                                                                                                                                      | 56                           | Due to retire ment 2006 | 5/3/1969      | 29/6/1994             | 9/5/2006                             | 13 years 6 months                        | 9/5/2006                  |
| 02     | Shri Jomba Loya, AE                                                                                                                                                                                     | 57                           | Prom otion 2006         | 7/3/1970      | 18/7/1994             | 7/6/2006                             | 13 years 5 months                        | 7/6/2006                  |
| 03     | Shri Itum Naso, AE                                                                                                                                                                                      | 62                           | Prom otion 2006         | 10/2/1974     | 6/9/1996              | 7/6/2006                             | 13 years 5 months                        | 7/6/2006                  |
| 04     | Shri R.J. Longchang, AE                                                                                                                                                                                 | 65                           | Prom otion 2007         | 28/2/1974     | 6/9/1996              | 20/11/2007                           | 12 years                                 | 20/11/2007                |
| 05     | Shri Najing Jamoh, AE                                                                                                                                                                                   | 69                           | Prom otion 2008         | 7/6/1969      | 12/9/1996             | 20/11/2007                           | 12 years                                 | 20/11/2007                |
| 06     | Shri Kasu Borang, AE                                                                                                                                                                                    | 61                           | Prom otion              | 14/8/1971     | 10/9/1996             | 26/08/2009                           | 10 years 3 months                        | 26/8/2009                 |

|    |                                |    |                                                                       |           |           |                |                      |           |
|----|--------------------------------|----|-----------------------------------------------------------------------|-----------|-----------|----------------|----------------------|-----------|
|    |                                |    | 2009                                                                  |           |           |                |                      |           |
| 07 | Shri Mayan<br>Kino, AE         | 64 | Prom<br>otion<br>,<br>2009                                            | 2/11/1970 | 3/9/1996  | 26/8/2009      | 10 years 3<br>months | 26/8/2009 |
| 08 | Shri Bomjom<br>Ado, AE         | 66 | Prom<br>otion<br>,<br>2008                                            | 25/4/1973 | 6/9/1996  | 16/8/2010      | 9 years 3<br>months  | 16/8/2010 |
| 09 | Shri Bhupen<br>Khamyang,<br>AE | 67 | Prom<br>otion<br>,<br>2008                                            | 9/2/1972  | 4/9/1996  | 16/8/2010      | 9 years 3<br>months  | 16/8/2010 |
| 10 | Shri Rana<br>Tok, AE           | 68 | Retir<br>eme<br>nt,<br>2011                                           | 4/4/1972  | 7/9/1996  | 6/6/2011       | 8 years 5<br>months  | 6/6/2011  |
| 11 | Shri Sengom<br>Takhnyo,<br>AE  | 70 | Prom<br>otion<br>,<br>2009                                            | 22/6/1974 | 20/9/1996 | 6/6/2011       | 8 years 5<br>months  | 6/6/2011  |
| 12 | Shri Tumba<br>Ingo, AE         | 73 | Creat<br>ion<br>of<br>Anini<br>Sub-<br>Div,<br>2011                   | 1/3/1973  | 28/9/1996 | 6/6/2011       | 8 years 5<br>months  | 6/6/2011  |
| 13 | Shri Bengia<br>Sankio, AE      | 74 | Creat<br>ion<br>of<br>Anini<br>,<br>Sub-<br>Div,<br>2011              | 6/12/1972 | 2/9/1996  | 6/6/2011       | 8 years 5<br>months  | 6/6/2011  |
| 14 | Shri Gobo<br>Kato, AE          | 75 | Due<br>to<br>deat<br>h of<br>Lt.<br>Koop<br>ur<br>Natu<br>ng,<br>2012 | 1/8/1971  | 7/9/1996  | 8/8/2012       | 7 years 3<br>months  | 8/8/2012  |
| 15 | Shri Tadang<br>Tamut, AE       | 76 | Prom<br>otion<br>,<br>2012                                            | 14/6/1971 | 30/8/1996 | 8/8/2012       | 7 years 3<br>months  | 8/8/2012  |
| 16 | Shri Milang<br>Changmi,<br>AE  | 77 | Retir<br>eme<br>nt,<br>2014                                           | 22/4/1971 | 4/9/1996  | 15/12/201<br>4 | 4 years 11<br>months | 15/12/201 |

|    |                        |    |                  |           |            |            |                   |            |
|----|------------------------|----|------------------|-----------|------------|------------|-------------------|------------|
| 17 | Shri Nabam Chada, AE   | 78 | Retirement, 2014 | 13/4/1975 | 7/9/1996   | 15/12/2014 | 4 years 11 months | 15/12/2014 |
| 18 | Shri Doge Kamduk, AE   | 81 | Retirement, 2015 | 16/6/1973 | 13/19/1996 | 20/10/2015 | 4 years 10 months | 20/10/2015 |
| 19 | Shri Jamnya Jini, AE   | 85 | Retirement, 2015 | 1/3/1969  | 1/10/1996  | 20/10/2015 | 4 years 1 month   | 20/1/2015  |
| 20 | Shri Muntu Khimhun, AE | 87 | Promotion, 2015  | 1/7/1973  | 26/90/1996 | 20/10/2015 | 4 years 1 month   | 20/10/2015 |
| 21 | Shri Jambey Gombu, AE  | 89 | Promotion, 2015  | 10/6/1969 | 13/10/1996 | 20/10/2015 | 4 years 1 month   | 20/10/2015 |
| 22 | Shri Tai Seniung       | 90 | Promotion, 2015  | 10/6/1973 | 17/9/1996  | 20/10/2015 | 4 years 1 month   | 20/10/15   |
| 23 | Shri Taya Doni, AE     | 91 | Promotion, 2015  | 1/8/1974  | 20/11/1996 | 20/10/2015 | 4 years 1 month   | 20/10/2015 |

**[6] RESERVATION POLICY**

The Promotion is to be considered 80:20 against promotional quota from Group B to Group A for the APST candidates (There is no candidate from the General Category in the said proposal at present).

**[7] VIGILANCE STATUS**

The Vigilance clearance report in respect of the following 6 (six) Assistant Engineers PHE & WS (adhoc) have been obtained from the State Vigilance Department and as per report all of them are clear from Vigilance angle. The details of which are shown below:

| Sl. No. | Name of the Officers | Sl. No in seniority list | Reference No. and date of vigilance OM |
|---------|----------------------|--------------------------|----------------------------------------|
| 1       | Shri Moli Tatu, AE   | 56                       | VIG-240/2018/80 dated- 18/06/2019      |
| 2       | Shri Jomba Laya, AE  | 57                       | VIG-240/2018/80 dated- 18/06/2019      |
| 3       | Shri Itum Naso, AE   | 62                       | VIG-240/2018/80 dated- 18/06/2019      |
| 4       | Shri Bomjum Ado, AE  | 66                       | VIG-240/2018/803 dated- 06/08/2019     |

|   |                             |    |                                     |
|---|-----------------------------|----|-------------------------------------|
| 5 | Shri Bhupen<br>Khamyang, AE | 67 | VIG-240/2018/803 dated- 06/08/2019  |
| 6 | Shri Taya Dono, AE          | 91 | VIG-240/2018/6024 dated- 25/10/2019 |

**[8] INTEGRITY CERTIFICATE**

*On the basis if the entries and other office records as well as the vigilance clearance issued by the Vigilance Department, necessary "Integrity Certificate" has been issued in favour of 6 (six) Assistant Engineers (adhoc) those who have been cleared from vigilance angle by the Competent Authority.*

**[9] ANNUAL PERFORMANCE APPRAISIAL REPORT**

*The Annual Performance Reports (APARS) for the last 05 (five) years in respect of all the above 23 (twenty three) officers are available. A Statement showing APAR grading in respect of each officers is also placed in the folder.*

*It is revealed from the official record available that while promoting/appointing the 23 Assistant Engineers on adhoc basis, the Post Based Model Roster Register has been maintained. But only the 6 incumbents (APST Category) having requisite documents like Vigilance Clearance/Integrity Certificate, up-to date APAR, etc. are readily available. The details of their names stand in Post Based Model Roster Register is shown as below:*

| S.No. | Name of the incumbents now under consideration for regularization as AE | Category | Sl. No. in Post Based Model Roster Register |
|-------|-------------------------------------------------------------------------|----------|---------------------------------------------|
| 1     | Mr. Moli Tatu                                                           | PST (R)  | 39                                          |
| 2     | Mr. Jomba Loya                                                          | APST (R) | 41                                          |
| 3     | Mr. Itum Naso                                                           | APST (R) | 43                                          |
| 4     | Mr. Bomjom Ado                                                          | APST (R) | 59                                          |
| 5     | Mr. Bhupen Khamyang                                                     | APST (R) | 61                                          |
| 6     | Mr. Taya Doni                                                           | APST (R) | 17 (in 2 <sup>nd</sup> cycle)               |

**12.** The DPC was held on 07.09.2020 whereby the names of thirteen (13) AEs (C) including the petitioners for promotion to the post of AE(C) were recommended w.e.f. the date of DPC i.e. 07.09.2020 and three (3) AEs(C) subject to the submission of fresh/renewal

vigilance clearance.

**13.** Consequent upon the recommendation of the DPC meeting held on 07.09.2020 as many as thirteen (13) AEs(C) were promoted/regularized which states that the Government of Arunachal Pradesh is pleased to consider regularization of the *adhoc* promotion of AEs(C) under PHE&WS Department w.e.f. the date of holding DPC i.e. 07.09.2020 vide No. Sectt/PHE(Estt)-161/2012 Pt-I dated 05.10.2020. Being aggrieved of the DPC as well as the consequent order dated 05.10.2020 issued by the Under Secretary, PHE&WS Department, the petitioners have preferred this writ petition.

**14.** Mr. R. Saikia, learned counsel for the petitioners, while referring to the minutes of the DPC, submits that petitioners are amongst those twenty-three (23) officers who have been appointed as AEs(C) on *adhoc* basis against the clear vacancies in the year 2006 though they were eligible way back in the year 1999 and 2001 respectively. The DPC has ignored deliberately all the aspects which were clearly highlighted such as vacancy position, rule, seniority, zone of consideration, benchmark, Vigilance Clearance etc. and recommended for prospective promotion/regularization w.e.f. the date of DPC dated 07.09.2020 which is illegal, arbitrary and discriminatory as in earlier occasions service of other officers as AE(C) has been regularized with retrospective effect. He submits that the prospective promotion/regularization of the services of the petitioners against the vacancies arose way back in 2006 due to retirement and promotion is not only bad in law but contrary to the law laid down by the Hon'ble Apex Court in the matter of promotion as well as principles laid down by this Court in the case of **Meyom Karge vs. State of Arunachal Pradesh**, reported in 2004 (Suppl) GLT 623. He submits that though the services of the petitioners as *adhoc* AE(C) in the Department has been regularized no retrospective effect were given whereas the petitioners ought to have been given retrospective promotion/regularization as the petitioner No. 1 was promoted as AE(C) on *adhoc* basis vide order dated 09.05.2006 and the petitioner Nos. 2 & 3 were promoted as AE(C) on 06.06.2006 respectively and they were granted scale of pay with all other benefits as that of a regular AE(C). He submits that retrospective is the natural consequence of promotion/regularization which ought to have been given to the petitioners, however, the DPC has recommended for prospective promotion/regularization of

the service of the petitioners w.e.f. the date of DPC i.e. 07.09.2020 without having an objective consideration.

**15.** Mr. R. Saikia, learned counsel for the petitioners submits that regularization/promotions of the petitioners as AE(C) were long overdue since the petitioners fall within the zone of consideration for promotion to the post of AE(C) way back in 2006 as they were eligible in the year 1999 and 2001, the DPC has decided to regularize/promote the petitioners w.e.f. the date of DPC without any fault on the part of the petitioners. No DPC meeting was conducted for many years though there were clear vacancies where the petitioners were allowed to work on *ad hoc* basis since 2006 which is in the teeth of observations made by Hon'ble Apex Court in the case of **Union of India vs. N.R. Bannerjee**, reported in (1997) 9 SCC 287. Nevertheless, the DPC ought to have considered the cases of the petitioners for retrospective promotion/regularization w.e.f. the date the petitioners were promoted as AE(C) in PHE&WS Department on *ad hoc* basis in the year 2006.

**16.** Mr. R. Saikia, learned counsel for the petitioner submits that in terms of 80:20 reservation ratio, the petitioners are senior-most JEs and in the event of consideration of promotion to the post of AE(C) under the Recruitment Rules, 1996 the petitioners' case ought to have been considered first for such promotional vacancies considering other eligibility criteria which the petitioners have. The DPC was basically held for regularization of *ad hoc* AE(C) who were serving for more than fourteen (14) years, more particularly, the petitioners. The DPC took consideration of the seniority list dated 06.02.2015 wherein the petitioners' names appears at serial Nos. 56, 57 & 62 and also the relevant Recruitment Rules, 1996 and findings regarding eligibility in terms of Recruitment Rules of 1996, as amended in 2005 *vis-à-vis* completion of requisite five (5) years length of regular service or more in the grade of JE and also having passed the Promotional Accounts Examination in the year 2000, APST within the 80:20 ratio of Reservation Policy, within promotional quota which fell vacant in the year 2006 due to promotion of three (3) incumbents and superannuation. However, the DPC without mentioning any reasons has regularized the *ad hoc* promotion of the petitioners from the date of DPC meeting i.e. 07.09.2020 without considering date of *ad hoc* promotion where the petitioners were eligible in terms of Service Rules and when there

were clear vacancies for promotional quota violating Articles 14 & 16 of the Constitution of India which is not tenable in the eye of law.

**17.** Mr. R. Saikia, learned counsel further submits that under the Recruitment Rules, 1996, for consideration of promotion, the method of recruitment and requisite eligibility criteria is 50% by promotion and 50% by direct recruitment, merit-cum-seniority, the requisite five (5) years of length of regular service in feeder grade having passed the Accounts Examination and the 80:20 ratio Reservation Policy in case of the APST candidates. The petitioners being admittedly eligible for consideration of promotion to the post of AE(C) in the year 1999 and 2001 having completed the required length of service on having attained the eligibility criteria, have accrued the right to be considered for promotion, which is fundamental right of the petitioners. The petitioners admittedly have all the requisite eligibility criteria in terms of the Rules, existence of clear promotional vacancy quotas of AE(C) and the petitioners being senior-most JEs, the non-consideration of regularization/promotion w.e.f. the date of the *adhoc* promotions of the petitioners is not sustainable. Therefore, the impugned minutes of DPC not regularizing the promotion from the date of initial *adhoc* promotion against the quotas is violative of Article 16 of the Constitution of India and hence, prays that this Hon'ble Court may be pleased to direct the respondent authorities to confer the date of regularization from the date of *adhoc* promotion i.e. 09.05.2006 and 06.06.2006 from the date of actual vacancy as the petitioners are eligible in terms of Recruitment Rules of 1996 and also applying the rules of continuous service. Mr. R. Saikia has placed reliance on the following judgment of the Hon'ble Supreme Court as well as this Court:-

**(i) Class II Engineer Officers Association vs. State of Maharashtra** reported in (1990) 2 SCC 715

**(ii) N & K Nayar vs. Union of India**, reported in 1992 Supp (2) 508

**(iii) Keshav Deo vs. State of Uttar Pradesh**, reported in (1999) 1 SCC 280

**(iv) Suraj Prakash Gupta vs. State of J&K**, reported in (2000) 7 SCC 561

**(v) Santosh Kumar vs. State of Andhra Pradesh**, reported in (2003) 5 SCC 511

**(vi) Ganga Vishan Gujarati and Ors. Vs. State of Rajasthan,** reported in (2019) 16 SCC 28

**(vii) Union of India and Anr. Vs. Manpreet Singh Poonam and Ors.,** reported in (2022) 6 SCC 105

**(viii) Meyom Karga vs. State of Arunachal Pradesh,** reported in 2004 (Supp) GLT 623

**(ix) Tech Jobac vs. State of Arunachal Pradesh,** reported in 2012 (3) GLT 248.

**18.** Mr. R.H. Nabam, learned Additional A.G. for the State respondents, while refuting the submissions advanced by Mr. R. Saikia, learned counsel for the petitioners, submits that the petitioners were appointed as JE on temporary basis without any interview which is prima facie illegal and *de-hors* the Recruitment Rules and also violative of Articles 14 and 16 of the Constitution of India. He submits that there are some Government notifications pertaining to *ad hoc* or officiating promotion in the case of overwhelming public interest and need of manpower to accomplish the various time bound projects and schemes. It is needless to say that such notification from the administrative side would not supersede or override the Recruitment Rules framed under Article 309 of the Constitution. It is an admitted fact that the present petitioners are beneficiary of such Government notification and got *ad hoc* promotion in the year 2006, with specified terms and conditions. Referring to the appointment orders on *ad hoc* basis of the petitioners, he submits that appointment order states and he quoted that, "*The promotion is purely on ad hoc basis and will not bestow on him to claim for regular appointment as Assistant Engineer and the ad hoc service rendered would not be counted for the purpose of seniority in the grade and eligibility for promotion, confirmation etc. unless his promotion is regularized by regular DPC in conformity with the provision of Recruitment Rules*". Therefore, the present petitioners cannot turn back, after accepting the terms and conditions of *ad hoc* promotion and not justified in claiming for regular appointment/seniority from the date of *ad hoc* appointment or from the date of vacancy of the post. Such claims are contrary to the appointment terms and conditions and *de-hors* Recruitment Rules; however domain has been bestowed to DPC. As per Recruitment Rules of 1996, as amended in 2005,

the qualifying length of regular service as JE is 5 years to be considered for promotion to the post of AE. Whereas in the present case, there is no document to show in which year the present petitioners' appointment on temporary basis service had been regularized. Even there is no whisper on this point in the entire petition filed by the petitioners. Hence, this issue is still murky and vital/mandatory under the Recruitment Rules of 2005 (amended) for necessary consideration in the matter of promotion and regularization etc.

**19.** Mr. Nabam, learned Additional AG, submits that the claim of the present petitioners is that they are the senior most JE (ST) serving in the Department which may be correct but the pertinent point is the promotion and seniority with the retrospective date or vacancy of the post in the Department at par with the Reservation Policy and promotion quota and also in conformity with the rules or not. When the question of promotion comes, it comes under the policy framed by the State Government and rules. As per Recruitment Rules of 1996, the vacancy posts are to be divided 50% equally between the direct recruits and promotees. As per State Government Policy, the post of Assistant Engineer comes under Group-A post (50:50) for APST and Non-APST. Now the 50% promotion quota again has to be shared by APST and Non-APST equally being a Group-A post.

**20.** Mr. Nabam, learned Additional AG, submits that this being the present situation and when one takes note of the final gradation list of JE published on 03.03.2015, the present petitioners' positions are in 56, 57 and 59. So they will supersede some of the fifty-five (55) nos. of JE's who are in the Department since 18.02.1918, as per Promotion/Reservation Policy of the State Government (50:50). If their claims are allowed without considering these fifty-five (55) JE's as per Recruitment Rules of 2005 and State Government Reservation Policy (50:50) then same will be a blatant/gross injustice and adversely affect them. Therefore, claim of the petitioners are unfounded and unjustified that if their *ad hoc* service in AE is regularized from the date of *ad hoc* or vacancy of the post, will not affect many persons in the department as there are fifty-five (55) JEs since 1918 and direct recruits of 2006 etc. will be immensely affected. Hence, the present case cannot be a case of simpliciter or retrospective regularization as projected by the petitioners. Further, prospective affected persons are neither being made a party in the present proceedings nor before this Hon'ble Court. No adverse order can be passed behind their back as they are not arraigned as party

though they are necessary party.

**21.** Mr. Nabam, learned Additional AG, submits that so far objection of delay in constitution and sitting of DPC is concerned, in the Department affidavit-in-opposition the reasons have been candidly explained in paragraph 7 and he quoted, "*That annual performance Appraisal Report and Vigilance Clearance of all officers who come under the zone of consideration for promotion including the petitioners were sought vide various letters and reminders but same were not submitted on time which led to delay in conducting the DPC*". He submits that these contentions of the Department are further substantiated in Back Ground Note for Departmental Committee to consider Regularization of *Adhoc* Appointment of AEs under PHE&WS Department that the petitioner No. 1 (Moli Tatu) Vigilance Clearance was obtained on 18.06.2019. The petitioner No. 2 (Jomba Loya) on 18.06.2019 and the petitioner No. 3 (Itum Naso) on 18.06.2019.

**22.** Mr. Nabam, learned Additional AG, submits that in the facts and circumstances of the present case it is crystal clear that all codal formalities for conducting DPC were completed in the year 2019 and DPC was held in the next year 2020. Hence there is no deliberate delay on the part of the department to conduct the DPC, as tried to be projected by the petitioners in this present case.

**23.** Mr. Nabam, learned Additional AG, submits that in Recruitment Rules of 1996, as amended in 2005, there are two modes of recruitment to the post of AE in the Department, 50% by direct recruitment and 50% by promotion from regular serving JEs. The present petitioners were appointed/promoted on *adhoc* AE in the year 2006, with stringent terms and conditions and in the meanwhile, two (2) AEs were directly recruited by the APPSC and appointed by the Department in the year 2006. The Hon'ble Court may be pleased to take note that the year of recruitment is the same i.e. 2006. In this present case the Hon'ble Court is going to determine *adhoc* date of retrospective regularization or from the date of vacancy of the post in the department, which will definitely effect seniority position by default. Regularization in the cadre and seniority position is two sides of the same coin or facet of one another in service jurisprudence. Before the Hon'ble Court comes to any logical conclusion

(decide from the date of *ad hoc* or date of vacancy of the post 2006) certain facts and law must be taken care of before such logical conclusion: (i) whether such action is as per Reservation Policy of the State Government which demands 50% for both APST and Non APST (ii) Recruitment Rules permit or not and (iii) such action will cause any adverse affect to the employees already in the regular cadre or not? Although the Recruitment Rules of 1996, as amended 2005, is silent on this point, however, such silence can be safely construed that the rule does not permit or else ought to have clarified the point. Further any dictum will directly and adversely affect the direct recruitees' seniority position in the cadre and also future promotional avenues and other employees (JEs) in the Department etc. or not? In fact in this present case it will immensely affect the JEs serving since 1918 and direct recruitees in seniority position and future promotion avenues.

**24.** He submits that in the meanwhile on recommendation of the APPSC, there are 16 numbers of direct recruitees serving as regular cadre (AE) in the department from 2006 to 2019, which is prima facie prior to DPC held on 2020. Considering all this aspect and also taking note of the terms and conditions of *ad hoc* appointment/promotion, on the recommendation of the DPC, the authority accepting the same decided to regularize the *ad hoc* service of the present petitioners from the date of recommendation of DPC without any ill motive and prejudice to all. Hence there is no infirmity in the regularization order issued on 5<sup>th</sup> October 2020 and the Hon'ble Court may be pleased not to interfere with the impugned order.

**25.** Mr. Nabam, learned Additional AG, placed reliance on the case of the **Union of India and Anr. vs. Manpreet Singh Poonam etc.** reported in (2022) 6SCC 105. He submits that the Hon'ble Apex Court said in paragraph 18, "*a mere existence of vacancy per se will not create a right in favor of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process*". Hence law has been settled that a mere existence of vacancy per se will not create a right in favor of an employee for retrospective

promotion. Therefore, the petitioners' claim for retrospective promotion or from the date of vacancy is not justified and liable to be deprecated by this Hon'ble Court in view of Apex Court. In the same paragraph, he submits the Hon'ble Apex Court also said that "*in the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the respondents in Civil Appeal No. 518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date of which actual vacancies arose is based on objective considerations and valid classification*". According to him, in this case, the Hon'ble Apex Court observed two things (i) that the authority acting within the rules and (ii) which in any case a benefit granted to the respondent in Civil Appeal No. 518 of 2017. Therefore in **Manpreet Singh's** case (supra), rule of 1979 itself permit for retrospective promotion after their names were recommended by the Selection Committee and also dictum of order or benefit already granted in Civil Appeal No. 518 of 2017 was there. Whereas in this present case there is no dictum of any judicial order in favour of the present petitioners for retrospective benefits. Therefore, facts and situation are totally different. Hence the above observation will not be applicable to the present case. In para 19, Hon'ble Apex Court held, in the case of **Union of India vs. K.K. Vadhera and Ors**, reported in 1989 Supp(2) SCC 625 at para 5 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen. In para 20, similarly, Hon'ble Apex Court in the case of **Ganga Vishan Gujrati and Ors. vs. State of Rajasthan** reported in (2019) 16SCC 28 has held at para 45 that, a consistent line of precedent of this Court follows the principle that retrospective seniority can't be granted to an employee from a date when the employee was not borne on the cadre. This principle emerges from the decision of the Constitutional Bench of this Court in **Class II Engg. Officers' Assn. vs. State of Maharashtra** reported in (1990) 2 SCC 715. The principle was reiterated by this Court in **State of Bihar vs. Akhouri Sachindra Nath**, reported in (1991) Supp(1) SCC 334 and **State of Uttaranchal vs. Dinesh Kumar Sharma** reported in (2007) 1 SCC 715.

**26.** Mr. Nabam, learned Additional AG, submits that since the consistently followed principle has already been laid down in above cases that the seniority cannot be granted from

the date when the employee was not borne on a cadre. Similarly, retrospective promotion or from the date of vacancy cannot be granted to the petitioners being two sides of the same coin.

**27.** He submits that in the case of **Pawan Pratab Singh vs. Reevan Singh** reported in (2011) 3SCC 267, the Apex Court went ahead in this matter at para 45 (iv). The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospective promotion unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. In this present case, he submits that all the petitioners are *ad hoc* promotees in the year 2006, *de-hors* Rules of 1996 and was not borne in the cadre and regularized only in the year 2020 on DPC recommendation. As already pointed out that from the year 2006 to 2019, there are sixteen (16) numbers of direct recruits in the Department, besides Senior JEs, who will be adversely affected, if granted retrospective promotion. According to him, this view was further re-affirmed by a Bench of three Judges in **P. Sudhakar Rao vs. U. Govind Rao** reported in (2013) 8SCC 693. Same proposition of law was reiterated in the following cases:

- (i) (2021) 5SCC 186, **Rashi Mani Mishra and Ors. vs. State of Uttar Pradesh and Ors.**
- (ii) Manu/SC/1302/2022, **Imlikokla Longchar and Ors. vs. State of Nagaland and Ors.**
- (iii) Civil Appeal Nos. 8324-8327 of 2022, **Amit Singh vs. Ravindra Nath Pandey and Ors.** decided on 11/11/2022.

Therefore, he submits in the premise of the present case and law laid down by the Hon'ble Apex Court, the present petition has no merit and the same is liable to be dismissed.

**28.** I have considered the rival submissions advanced by the learned counsel for the parties and also perused the materials available on record.

**29.** The issue for determination in this present proceedings is as to the effective date of

promotion/regularization, whether from the date of DPC or from the date of vacancy of the post(s) particularly when the DPC is conducted for regularization/promotion of the *ad-hoc* promotion given in the year 2006 after a lapse of fourteen (14) years in terms of the Recruitment Rules or any other Office memorandums holding the field.

**30.** For appropriate consideration of the issue, it is apposite to refer and consider the Recruitment Rules and other Office Memorandums holding the field. The provisions of Recruitment Rules, 1996 to the post of AE/ASW are reproduced herein below:-

*“GOVERNMENT OF ARUNACHAL PRADESH  
:: DEPARTMENT OF PUBLIC HEALTH  
ENGINEERING*

*NOTIFICATION*

*Dated Itanagar, the ....th....'96*

*No.PHED-I ::: In exercise of the powers conferred by the provision to Article 309 of the constitution of India the Governor of Arunachal Pradesh is pleased to make the following rules to regulate the method of recruitment to the post of **Assistant Engineer/ASW** Public Health Engineering Department under the Government of Arunachal Pradesh.*

*1. Short title and Commencement*

*(i) These Rules may be called as Recruitment Rules 1996 for the post of **A.E./ASW** Public Health Engineering Deptt., Arunachal Pradesh Service Grade 'B'. They shall come into force on the date of their publication in the Arunachal Pradesh Gazette*

*2. Application.*

*(ii) These Rules shall apply to the post specified in column-I of the Schedule hereto annexed.*

*3. Number of Post-Classification & Scale of pay*

*(iii) The Number of the said posts, their classification and the scale of pay attached thereto shall be as specified in Columns 2 to 4 of the Schedule aforesaid.*

*4. Method of recruitment age limit and other Qualification.*

*(iv) The method of recruitment etc. shall be as per columns 5-13 of the schedule annexed.*

*5. Disqualification*

*: No Person*

*(a) Who has entered into or contracted a marriage with a person having a spouse living  
OR*

*(b) Who having a spouse living has entered into or contracted marriage with any person, shall be eligible for appointment of the said post provided that such marriage is permissible under the personal law application to such person and the*

other party to the marriage and there are other grounds for so doing, exempt any person from operation of this rule

- (c) That the Governor of Arunachal Pradesh is of the opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, and in consultation with the selection Board/APPSC relax any of the provisions of these rules with respect to any class or category of persons.

*Reservation other concessions*

Nothing in these rules shall affect reservation and other concessions required to be provided for the scheduled Tribes and other categories of persons in accordance with the orders issued by the Govt. of Arunachal Pradesh, if any, from time to time in this regard.

*Repeal and Saving*

All Rules pertaining to these if any, are hereby replaced. Provided : any order made or anything done or action taken under the rules so repealed/supersedes or under any general order shall be deemed to have made, done or taken under the corresponding provisions of these rules.

*Issued by order and in the name of Governor.*

Commissioner (PHE)  
Govt. of Arunachal Pradesh,  
Itanagar

SCHEDULE

IN THE DEPARTMENT OF PUBLIC HEALTH ENGINEERING ARUNACHAL PRADESH  
RECRUITMENT RULES FOR THE POST ASSISTANT ENGINEER/ASW

FILE NO. PHE/Sectt-34/96(Pt-I)

| Name of Post                 | No. of Posts                                                | Classification                                           | Scale of Pay                 | Whether Selection Post or non-Selection post | Age for direct recruits                                           | Whether benefit of added years of service admissible under Rules 30 of CCS (Pension) Rules 1972 | Education and other qualification required for direct recruits.                         |
|------------------------------|-------------------------------------------------------------|----------------------------------------------------------|------------------------------|----------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1                            | 2                                                           | 3                                                        | 4                            | 5                                            | 6                                                                 | 7                                                                                               | 8                                                                                       |
| Assistant Engineer Civil/ASW | 55 (Fifty-five) subject to variation depending on work load | General Arunachal (PHE) service, Group 'B' Gazetted Non- | Rs.20 00-60-2300-EB-75-3200- | Selection                                    | 18 years to 28 yrs. 5 (five) years relaxation in case of A.P.S.T. | Not applicable                                                                                  | Essential:-<br>1)<br>AA Degree in Civil Engg. From a recognized University or Institute |

|  |  |             |                     |  |  |  |                                                                                                                                                                                   |
|--|--|-------------|---------------------|--|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | Ministerial | 100-3500/-<br>=P.M. |  |  |  | <u>Desirable:-</u><br>Experience of working in the hilly areas for execution of Urban/ Rural Water Supply Schemes and Training in Public Health Engineering and Sanitation works. |
|--|--|-------------|---------------------|--|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Whether age and educational qualification prescribed for direct recruitments will apply in the case of promotees | Period of probation if any | Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods             | In case of Recruitment by promotion/deputation transfers, grades from which promotion/deputation/transfer to be made                                                                                                                                     | If a Departmental promotion committee exists what is its composition                                                                                                                                         | Circumstances in which UPSC is to be consulted in making recruitment.                                                            |
|------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| 9                                                                                                                | 10                         | 11                                                                                                                                                                        | 12                                                                                                                                                                                                                                                       | 13                                                                                                                                                                                                           | 14                                                                                                                               |
| No                                                                                                               | 2 (Two) years              | a)50% by promotion failing which by transfer on deputation.<br><br>b) 50% by direct recruitment on the basis of written examination and viva-voce conducted by the APPSC. | By promotion from amongst the TAs and JEs of PHED having 3 (three) years regular service as TA and 8 (eight) years regular service as JE respectively subject to passing of Departmental Professional Examination in Accounts.<br><br>Degree holder (BE) | 1) Chairman or a Member of the Commission<br><br>2) Secy./ Commr. Of the Department concerned.<br><br>3) Secy. of a Department not connected with the work of the Deptt.<br><br><u>One officer belonging</u> | A.P. Public Service Commission is required to be consulted as per provision of APPSC. (Limitation of functions) Regulation, 1988 |

|  |  |                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                       |  |
|--|--|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|--|
|  |  | <p>80% of the post meant for direct recruitment shall be reserved for APST</p> | <p>APST JEs are eligible for promotion to the post of TA on completion of 2 (two) years regular service and 5 (five) years regular service for promotion to the post of AE/ASW</p> <p>By transfer on deputation from officers of Central/State Govts. from TAs holding analogous posts from TAs and JEs having 3 (three) years regular service in the scale of Rs. 1,640-2,900/= p.m. &amp; 8 (eight) years regular service in the scale of pay Rs.1,400-2,300/=p.m. respectively possessing educational qualification &amp; experience as prescribed under col.8 of the draft RPs.</p> | <p>to ST not below the rank of Secy. to the Govt.</p> |  |
|--|--|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|--|

**31.** Recruitment Rules, 1996 was amended in 2005 which reads as follows:-

“GOVERNMENT OF ARUNACHAL PRADESH  
SECTT. PUBLIC HEALTH ENGINEERING & WATER SUPPLY DEPTT.  
ITANAGAR – 791111

No. PHE/Sectt-34/96(Pt-I).      Dated Itanagar, the 20<sup>th</sup> July, 2005

NOTIFICATION

*In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Arunachal Pradesh is pleased to make the following rules to regulate the method of recruitment to the post(s) of Assistant Engineer (Civil) in the Public Health Engineering & Water Supply Department under the Government of Arunachal Pradesh, Namely:-*

**1. Short Title and Commencement :-**

- (i) These rules may be called "the Recruitment to the post of Assistant Engineer (First Amendment) Rules, 2005
- (ii) They shall come into force on the date of publication in the Arunachal Pradesh Gazette.

**2. Amendment to the Schedule:-**

*In the Recruitment of the posts of Assistant Engineer (Civil) notified vide No. PHE/Sectt-34/96(Pt-I) dated 9/12/1998 against the existing provisions of column 4 & 12, the following shall be substituted, Namely:-*

*"1. Column 4 : Rs.8000-275-13500/PM*

*2. Column 12 : Promotion from Junior Engineer (Civil) of the Department having 8 (eight) years of regular service in the grade in case of Diploma holders and 5 (five) years of regular service in case of degree holders respectively provided they have passed in accounts examinations as Junior Engineer".*

*Sd/-  
(T.NORBU)  
Secretary (PHED)  
Govt. of Arunachal Pradesh  
Itanagar*

**32.** It transpires that Column 12 has been substituted as "promotion from Junior Engineer (C) of the Department having eight (8) years of regular service in the Grade in case of diploma holders and five (5) years of regular services in case of degree holders respectively provided they have passed in Accounts Examination in JE".

**33.** Office Memorandum No. OM-8/17 dated 20.04.2000 reads as follows:-

*"GOVERNMENT OF ARUNACHAL PRADESH  
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS &  
TRAINING  
ITANAGAR*

*No. OM-8/17*

*Dated Itanagar, the 20<sup>th</sup> April/2000*

OFFICE MEMORANDUM

*Subject : Procedure for making adhoc/officiating/temporary  
appointment/promotion of short term duration and  
appointment on contract basis*

**5. ADHOC PROMOTION AGAINST PROMOTION VACANCIES/POSTS.**

(ii) *Adhoc promotion to posts are to be made on the basis of seniority-cum-fitness of the officer/official in the feeder grade even where promotion is by selection method.*

(iii).....

(iv) *Only those officers who fulfilled the eligibility condition prescribed in the Recruitment Rules should be considered for adhoc appointment/promotion."*

**34.** On bare reading of the provisions of Recruitment Rules, 1996 it transpires that method of recruitment is 50% by promotion and 50% by direct recruitment. Column 12 provides that by promotion amongst the JEs having eight (8) years of regular service in the grade in case of diploma holders and five (5) years of regular services in case of degree holders respectively provided they have passed in Accounts Examination. Under Column 14 it provides for circumstances in which PSC is to be consulted wherein it provides that APSC is required to be consulted as per the provisions of APPSC (Limitation of Functions) Regulation, 1988.

**35.** It is noted that Recruitment Rules, 1996, is silent about the mode of appointment to the promotional post of AE on *ad-hoc* /officiating basis. However, in column 14 of the said Recruitment Rules, 1996 there is requirement of consultation with PSC. Under regulation 4 (b) of the APPSC (Limitation of Functions ) Regulation, 1988 for the purpose of making regular promotion provides for consultation in case of promotion from lower to higher grade and for consultation for officiating promotion if such promotion is likely to last for more than one year which shows that there is a provision for making officiating/*adhoc* promotion as seems supplemented by regulation 4 (c) of the APPSC (Limitation of Functions) Regulation, 1988 to Recruitment Rules of 1996, as amended in 2005. However, the said provision of regulation 4 APPSC (Limitation of Functions) Regulation, 1988 appears to have been omitted by OM dated 22.12.2000 resultantly after 22.12.2000 for both the regular and *adhoc* promotion there is no requirement for consultation with the PSC.

**36.** On the perusal of the Office memorandum OM-8/17 dated 20.04.2000 {placed by the learned counsel for the petitioners and duly shared with learned Addl. AG at the time of

hearing} at clause (5) provides for procedure for making *adhoc* promotion against promotional vacancies/posts. Sub clause (II) of Clause 5 provides *adhoc* promotion to be made on the basis of seniority-cum-fitness of officials in feeder grade even where promotion is by selection method under the rules. Sub-clause (IV) provides for *adhoc* promotions for those officers who fulfils the eligibility condition prescribed in the rules.

**37.** On joint reading of Recruitment Rules of 1996, as amended in 2005, and Office memorandum OM-8/17 dated 20.04.2000 it transpires that for consideration of *ad-hoc* promotion the followings are the main eligibility criteria:-(a) the seniority position of the incumbent JE, (b) the requisite educational qualification—either diploma or graduate in Engineering (Civil), (c) the length of service for Bachelor of Engineering holder five (5) years for regular service in the cadre of JE, (d) having passed the Departmental Professional Examination in Accounts, (e) *ad-hoc* promotion to be made within the promotional quota of 50% and (f) *ad-hoc* promotion within the 80% reserved category.

**38.** This court takes note that on the recommendation of DPC altogether twenty-one (21) JEs were promoted to the post of AEs on *ad-hoc* /officiating basis and has been regularized from various dates more particularly from the year 1996 and 1999. The petitioners have drawn attention to the case of serial nos. 2, 8 and 13 namely Shri P.K. Dey, Shri Toney Ete and Shri C. Pankajakshan were regularized on 07.10.1996, 29.08.1997 and 02.07.1999 respectively which shows that these three (3) JEs were promoted from the aforesaid respective dates against the promotional quota under Rules of 1996. Shri C. Pankajakshan was superannuated on 03.04.2006 who was promoted to the post of AE vide order dated 13.03.2001 w.e.f. 02.07.1999 against the promotional quota, on his retirement, thus, a promotional quota of AE fell vacant. Shri Toney Ete was promoted to the post of E.E. who was promoted to the post of AE vide order dated 13.03.2001 w.e.f. 29.08.1997 against the promotional quota and his further promotion to the post of EE, the promotional quota of AE fell vacant. Likewise, Shri P.K. Dey was superannuated on 30.05.2008, who was promoted to the post of AE vide order dated 13.03.2001 w.e.f. 07.10.1996 against promotional quota, on his promotion to the post of EE on 09.05.2006 the post of AE fell vacant. The petitioners were promoted to the post of AE(C) on *ad-hoc* basis with scale of pay of AE(C) though it is

stated that the promotion is purely on *ad-hoc* basis and will not be basis for claim to regular appointment as AE and the *ad-hoc* services rendered will not be counted for the purpose of promotion etc., however, it is followed by the qualified sentence which expressly provides that ***unless his promotion is regularized by the regular DPC in conformation with the Recruitment Rules.***

**39.** It is noted that at the time of granting *ad-hoc* promotions of the petitioners in the promotional post of AE(C), the petitioners have all the requisite eligibility for promotion in terms of Rules of 1996, being Graduate in Civil Engineering having more than five (5) years length of regular service in the feeder grade, senior-most APST Junior Engineers as per the seniority list also having passed Promotional Accounts Examination in the year 2000 and also the APST candidates within 80:20 ratio of the Reservation Policy of the State and within the promotional quota and also the vacancy position of the promotional quota which is supported by the minutes of the DPC held on 07.09.2020. It is also taken note of the fact that the petitioners' names also appeared in seniority-list of AE(C).

**40.** This court finds apposite to consider the findings of the DPC dated 07.09.2020 which are as follows:-

*“Serial No. 1 of Minutes of DPC (Vacancy arose due to promotion/superannuation – Promotional Quota):*

*(i) Superannuation of Shri C. Pankajakshan*

*(ii) Promotion of Shri Toney Ete*

*(iii) Promotion of Shri P.K. Dey*

*Serial No. 2- the details of officers as appointed as AEs (PHE&WS) on adhoc basis against the aforesaid vacancies shown in Table A*

*1. Shri Moli Tattu petitioner No. 1 (Sl. No. 56 of Seniority list of JE) against Superannuation of Shri C. Pankajakshan*

*2. Shri Jomba Loya petitioner No. 2 (Sl. No. 57 of Seniority list of JE) against Promotion of Shri Toney Ete*

*3. Shri Itum Naso petitioner No. 3 (Sl. No. 62 of Seniority list of JE) against Promotion of Shri P.K. Dey.”*

The DPC considered Recruitment Rules of 1996 regularization of adhoc promotions. Petitioners' names appeared at serial nos. 1, 2 and 3 having passed their respective Departmental Examinations on 25.06.2000. For regularization of 23 adhoc AEs finding was that all the 23 adhoc AEs have completed 20 to 25 years as JEs in the feeder cadre. And holding the post of AEs on adhoc basis since last 4 to 12 years against the clear promotional vacancy (the petitioners have rendered more than 14 years as adhoc AE). The seniority list of JEs dated 20.03.2015 was considered. There is a finding to the effect that the Officers vide serial nos. 1 to 55 have either been promoted to the post of Assistant Engineer (PHE&WS) on regular basis or retired from Government service on attaining the age of superannuation. The name of the petitioners are placed at serial nos. 1, 2 and 3 for consideration of their regularization in the said Minutes which shows that the petitioners are enlisted at serial nos. 1, 2 and 3 in merit amongst the twenty-three (23) incumbents for consideration of regularization of their *adhoc* promotion. Reservation Policy 80:20 ratio against promotional quota has been duly considered and there is specific finding that there is no candidate for general category/Non-APST in the said proposal. In terms of the Post Based Model Roster Register being maintained by the Department petitioners are placed at Roster nos. 39, 41 and 43 respectively.

**41.** The stand of the State respondents that the Annual Performance Appraisal Reports (APARs), No Objection Certificate and Report of Vigilance Clearance of all the Officers who comes under the zone of consideration for promotion including the petitioners were sought by various letters and reminders but the same were not submitted on time which led to delay in conducting the DPC is not supported by any tangible materials which cannot be accepted that for fourteen (14) long years the respondent authorities could wait for such requirements

whereas under the law the year-wise panel has to be prepared and DPC has to be normally conducted every year. The stand of the State respondents that year-wise panel cannot be prepared by depicting number of vacancies by promotional quota because in the Department no clear vacancy for the post of promotional quota was available and the promotion of the petitioners against the direct recruitment quota which created a backlog in the direct recruitment quota also cannot be accepted as the same is not supported by any documents rather the petitioners could establish that they became eligible in the year 1999 and 2001 respectively and that they were promoted on *ad hoc* basis in the year 2006 on existing clear vacancies as well as the stand of the petitioners that they have approached the authorities including filing of the writ petition referred to above by petitioners Nos. 1 & 2 for regularization/promotion by conducting DPC.

**42.** Further stand of the State respondents that the regularization of sixteen (16) *ad hoc* AEs including the petitioners after the consideration of all eligibility criteria with prospective effect by the DPC dated 07.09.2020 is as per the Government of India, Department of Personnel Training order dated 01.07.1991 is also appears to be misplaced in view of the fact that the said OM relates to the date from which the appointment should be deemed regular when a Government servant who is already holding a post on *ad hoc* basis and later selected by regular appointment thereto which indicates that it is a case of appointment on *ad hoc* basis. In the present case as noted above the Recruitment Rules, 1996 as well as OM dated 18.10.2007 indicates that the post can be filled up on *ad hoc* basis as admittedly there were clear vacancies when the petitioners were promoted on *ad hoc* basis.

**43.** Now this Court would proceed to consider the judgments relied by the learned counsel for the parties:-

(i) In ***Class II Engineer Officers Association*** (supra) the Hon'ble Supreme Court has held as follows:-

*“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan's case*

*was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgment by*

*the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold*

*otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in Baleshwar Dass v. State of U.P. and others, and [Delhi Water Supply and Sewage Disposal Committee and others v. R.K. Kashyap and others](#), with which we are in agreement. In Narender Chadha and others v. Union of India and others, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”*

*“47. To sum up, we hold that:*

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

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

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

(ii) In **N&K Nayar vs. Union of India**, reported in 1992 Supp(2) 508, the Hon'ble Apex Court has held as follows:-

*"5. Petitioner No. 1 Mr. N.S.K. Nayar was selected in the year 1975 for promotion to the JTS. He was however, promoted to STS under Rule 27B of the Rules on July 14, 1975. He continuously worked in STS till June 30, 1987 when he retired from service. Petitioners 2 to 9 were brought on the approved list for promotion to JTS during the period 1976-78. They were promoted to the STS on October 21, 1976, October 30, 1976, January 16, 1978, October 30, 1978, October 30, 1978, October 31, 1978, June 27, 1979 and June 27, 1979 respectively. These petitioners are holding the posts in STS to-date. They were also appointed substantively to JTS during that period but they never held the posts in the said grade. What emerges is that Petitioner 1 retired from service after holding the post in STS for about 12 years and the other petitioners are holding the posts in STS from 12 to 15 years. The grouse of the petitioners is that in spite of holding the posts in STS for such a long period they are not being treated as regular members thereof. To buttress their claim further it is stated that the direct recruits with much lesser service have long been promoted to the higher posts in JAG. For example Mr. Rajesh Wadhwa, respondent No. 5 joined JTS as direct recruit on December 29, 1975. He was promoted to STS on December 29, 1979 and was further promoted to the JAG on February 22, 1984. The petitioners are not being considered for promotion to the JAG because they are not regularised in the cadre of STS inspite of the fact that they have put in 10 to 15 years of service in the said grade.*

*6. We have heard learned Counsel for the parties at length. It is no*

*doubt correct that the regular channel of promotion to Group A Service provided to the officers of the Telegraph Engineering Service Class II under the Rules is to the JTS and their promotions under Rule 27(b) are only to meet the administrative-exigency of short-tenure. We are of the view that Rule 27(b) of the Rules has been made to enable the Government to meet an ad-hoc shortage of officers to man the posts in STS. The class II officers have long experience to their credit and the nature of their work is almost identical to that of the posts in JTS. The direct recruits to JTS are deputed to work in Class-II posts to acquire experience. It is also not disputed that a class-II officer who is on the approved list for promotion is competent and eligible to work in JTS and STS. It is in this background that Rule 27(b) has been enacted to enable the Government to fill the large number of vacancies in STS by appointing Class-II officers with a frog-leap from class-II to STS by passing the JTS. The object of having Rule 27(b) of the Rules is to provide a source of appointment to meet an administrative exigency of short tenure. It could never be the intention of the framers of the Rule to permit the appointments under the said Rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/officiating or to hold charge. Taking work out of the petitioners in the STS posts for 10/15 years and denying them the right of regularisation and the consequent benefits in the said grade, is wholly arbitrary and is violative of Article 16 of the Constitution of India."*

(iii) In **Keshav Deo & Anr. vs. State of Uttar Pradesh** reported in (1999) 1 SCC 280 the Apex Court held as follows:-

*19. In Direct Recruit Class II Engineering Officers Association versus State of Maharashtra and others (1990) 2 SCC 715, the Constitution Bench held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The Bench summed*

*up the law in the form of eleven propositions. It is sufficient to refer to the first two propositions which are the following terms :*

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

*to the date of his confirmation.*

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

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

(iv) In **Suraj Parkash Gupta & Ors. Vs. State of J&K & Ors.**, reported in (2000) 7 SCC 561 the Hon'ble Apex Court has held as follows:-

*"56. It is true that while Rule 15 permits probation to be commenced from an anterior date in the case of one 'appointed' temporarily there is no such clause in Rule 25 dealing with 'promotions'. That does not, in our opinion, mean that in respect of a person temporarily appointed by transfer, probation cannot be commenced from an anterior date. In our view, this power is implicit in Rule 23 itself when it speaks of a probationer being appointed as a member of a service with retrospective effect. Once a promotee or recruitee by transfer is appointed on probation, it is permissible to appoint him under Rule 23 as a member of the service from an anterior date when a substantive vacancy existed in his quota. It is then obvious that such power to make a retrospective*

*appointment of a member implies a power to commence probation of such person from an anterior date when a clear vacancy existed in his quota. We cannot imagine that the Rule- making authority did not visualise delays in regularisation of ad hoc or stop-gap or temporary service rendered by promotees or those recruited by transfer and kept in mind delay only in cases of appointments under Rule 14.*

*57. Thus, the stop-gap/ad hoc or temporary service of a person appointed by transfer as an Assistant Engineer or by promotion as an Assistant Executive Engineer can be regularised through PSC/DPC from an anterior date in a clear vacancy in his quota, if he is eligible and found suitable for such transfer or promotion, as the case may be, and his seniority will count from that date.*

*62. This principle is supported by ample authority. Procedural inaction towards promotees, it has been held, can be "rectified". This is explained in the three Judge Bench case in State of West Bengal v. Aghore Nath Dey, [1993] 3 SCC 371. In that judgment propositions A and B laid down in Direct Recruit Case [1990] 2 SCC 715 were explained by Verma, J. (as he then was). It was pointed out that proposition A where it was held that the ad hoc service would not count was one where the same was stop gap (i.e. and remained as such). In proposition B it was said that ad hoc service could count in certain situations such as where there was only a 'procedural' irregularity in making appointments according to Rules. In such a situation, the irregularity can be subsequently 'rectified'. In such a case such ad hoc stop-gap or temporary service could be counted. Again in Syed Khalid Rizvi's case, it was held by Ramaswamy, J. speaking for the three Judge Bench that proposition A and B in Direct Recruit case had to be read with para 13 therein. Similarly, in I.K. Sukhija v. Union of India, [1997] 6 SCC 406, Nanavati, J. explained propositions A and B by reference to Aghore Nath Dey's case [1993] 3 SCC 371, referred to above.*

*77. We shall next refer to another set of cases relied upon by the direct recruits where, on facts, the promotees were not given benefit of*

*ad hoc/stop gap service. Here the service rendered by the promotee was either outside quota or the candidates were not eligible by the date the order of regularisation was passed or were not having the required experience. In C.K. Antony v. B. Muraleedharan, [1998] 6 SCC 630, arising from the Kerala State has some special features. There was a rule similar to Rule 23 of the J & K Rules and Rule 23(a) of the Andhra Pradesh Rules. The said rule permitted retrospective regularisation of the promotees from anterior dates but this rule stated that the said regularisation should be "without prejudice to seniority". It was no doubt interpreted that the rule meant that the seniority of direct recruits could not be affected. The question as to when it could be said that the seniority of a direct recruit would be prejudiced, was not elaborated. Whether the case of direct recruits would be prejudiced even if the promotees were given seniority from an anterior date upon a post within their quota, was not decided. Further, on facts, the earlier ad hoc promotion of the promotees was not against cadre posts but was on the excess quota. Obviously, it could not count for seniority in view of Direct Recruit's case. Any regularisation of such service in a direct recruitment post would definitely prejudice the seniority of direct recruits. In view of the above peculiar features, the case is clearly distinguishable. Similarly, the decision in D.N. Agarwal v. State of MP, [1990] 2 SCC 553, cannot help. There it was held that the benefit of retrospective regularisation for promotees could not be granted but this was because the promotees lacked the requisite years of experience and were not eligible. B.N. Nagarajan v. State of Karnataka, [1979] 3 SCR 937 the promotees service from 1.11.1956 was regularised and it was held that the order of regularisation by government w.e.f. 1.11.1956 by an executive order was not tenable because the probation Rules came in 1958 and in fact, the promotions were partly within quota of direct recruits. The case in [State of Bihar v. Akhouri Sachindra Nath](#), AIR (1991) SC 1244, is again distinguishable because there the promotees were not even officiating in the post on 22.2.61 and were not even born in the cadre. These cases are all distinguishable.*

*78. Unfortunately these rulings have been wrongly relied upon by the direct recruits or by the High Court, to hold that promotees are not entitled to benefit of the ad hoc/stop gap service.*

*79. Summarising the position, we therefore hold that the ad hoc/stop gap service of the promotees cannot be treated as non-est merely because P.S.C. was not consulted in respect of continuance of the ad hoc/stop gap service beyond six months. Such service is capable of being regularised under Rule 23 of the J&K (CCA) Rules, 1956 and rectified with retrospective effect from the date of occurrence of a clear vacancy in the promotion quota, subject to eligibility, fitness and other relevant factors. There is no 'rota' rule applicable. The 'quota' rule has not broken down. Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota, after due regularisation. Such service outside promotee quota cannot count for seniority. Service of promotees which is regularised with retrospective effect from date of vacancies within quota counts for seniority. However, any part of such ad hoc/stop gap or even regular service rendered while occupying the direct recruitment quota cannot be counted. Seniority of promotees or transferees is to be fixed as per quota and from date of commencement of probation/regular appointment as stated above. Seniority of direct recruit is from the date of substantive appointment. Seniority has to be worked out between direct recruits or promotees for each year. We decide point 3 accordingly."*

(v) In **Santosh Kumar vs. State of J&K** reported in (2003) 5 SCC 511 the Hon'ble Apex Court held as follows:-

*"16. Another important factor to be kept in mind is that a finding is recorded by the High Court that the promotion given to the respondent to the post of Sub-Inspector was against the vacancies meant for the quota of promotees. The respondent was admittedly promoted on temporary basis as OSSI prior to the recruitment of the appellant. Once his services were regularized, that too in the promotee quota, the*

*appellant being a direct recruit cannot make any grievance. In this view it cannot be said that the appellant was an affected person for want of notice before passing the order of relaxation to question the seniority of the respondent."*

(vi) In **Ganga Vishan Gujarati and Ors. vs. State of Rajasthan** (supra) the Hon'ble Apex Court held as follows:- para 43 and 44.

*"Part IV of the 2001 Rules lays down the procedure for direct recruitment from Rules 22 to 33. Part V provides for the procedure for recruitment by promotion. Rule 13 requires a determination of the actual number of vacancies occurring during a financial year as on 1 April every year. Where a post is filled in by a single method then the vacancies as determined shall be filled in by that method. Where more than one method is prescribed posts are filled by apportionment of vacancies. Rule 35 applies to promotions which are carried out by a departmental promotion committee constituted under Rule 34. Rule 35(6) requires the committee to consider the cases of persons who would have been eligible in the year to which the vacancy relates, irrespective of the year in which the meeting of the committee is held. Such promotions would be governed by the criteria and procedure applicable in the year to which the vacancy relates and the service / experience of the incumbent who is promoted shall be counted for promotion to a higher post for any period during which the candidate has not actually performed the duties of the post. Where a limited competitive examination is being held for accelerated promotion, Rule 35 has no application. The procedure for recruitment in Part V of the 2001 Rules does not comprehend a situation involving a limited competitive examination for accelerated promotion. Rule 48 which is the repeal and savings provision stipulates that all rules and orders relating to matters covered by those rules and in force immediately before the commencement of the rules are repealed. The 2001 Rules contains a schedule and as we have seen earlier, Rule 6(a) provides that the*

*service shall consist of persons holding substantive posts or persons recruited to subordinate service posts or persons specified in the schedule, besides persons recruited in accordance with the provisions of the rules.*

*44. It is evident from Part V of the 2001 Rules more particularly, the rules governing promotion contained in Rules 34 and 35 that the deeming fiction envisaged in Rule 35(6) applies to promotions made under the auspices of a DPC. In the case of such promotions, Rule 35 mandates that the committee constituted under Rule 34 must consider the cases of persons who were eligible in the year to which the vacancy relates irrespective of the year in which the meeting of the committee is held. The underlying rationale for Rule 35(6) is that on the determination of year-wise vacancies, rights are crystalised with reference to the year in which the vacancy has arisen. Consequently, the delay on the part of the DPC in convening its meeting should not result in a prejudice to those candidates who were eligible for promotion and ought to have been promoted but were not considered with reference to the year in which the vacancy arose. This principle in Rule 35(6) is in the nature of a deeming fiction. Undoubtedly, once a deeming fiction comes into being, full effect must be given to its ambit. Equally, a deeming fiction can apply to the extent to which and in a situation where the law mandates that it be applied. In the present case, it is evident that the deeming fiction which applies in the context of a DPC having been convened beyond the year in which the promotional vacancy arose has no application to candidates who are recruited on the basis of a competitive examination for the grant of accelerated promotion. There is a fundamental reason why the deeming fiction cannot be extended to the situation implicated in Rule 284(ii). In order to appear in the competitive examination contemplated by Rule 284(ii), a candidate must fulfill the conditions of eligibility prescribed in Rule 286. Rule 286 stipulates that in-service Patwaris must have a minimum service of five years before they can appear at the competitive*

*examination under Rule 284(ii). Conferment of a deemed seniority may result in a situation where a candidate secures seniority with effect from an anterior date on which he or she was neither borne on the cadre nor was qualified. Such a consequence would be impermissible, at least in the absence of an express statutory provision to that effect.”*

(vii) In **Union of India vs. Manpreet Singh Poonam** (supra) the Hon’ble Apex Court held as follows:-

*“15. On facts, we find that promotions could be given for the reason that the migration of the then incumbent in the post of JAG-I, despite being in the select list to the cadre of IAS, did not take place and thus, they were working in the said post till the date of notification paving way. The aforesaid factual position not disputed, the rigor of Rule 4 would certainly come into play. We do not find the proviso to Rule 4 helping the case of the respondents. The post of JAG-I is certainly a promotional post from the feeder cadre of the JAG-II.*

*17. On facts, there is no dispute that Respondent in Civil Appeal No.518 of 2017 was given promotion after the successful consideration by the DPC. On such clearance the appellant has rightly fixed the promotion with the year of actual vacancy, as per rules. Thus, the Respondent neither on facts nor on law can claim retrospective promotion, and that too from the year 2009 being the year in which he was placed in the select list against a notional vacancy, especially when the then existing vacancy accrued only in the year 2011, when the JAG-I officers were actually inducted into IAS, against which he was promoted. As such, the promotion cannot be granted retrospectively and extended to give benefit and seniority from the date of notional vacancy, causing violence to Rule 4 and 7 of the 2003 Rules.*

*19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification."*

(viii) In the case of **Meyom Karge vs. State of Arunachal Pradesh**, reported in 2004 (Supp) GLT 623 this Court has held as follows:-

*"2. The petitioner in this writ petition was, on 12.5.1988, appointed as Junior Engineer (Electrical), hereinafter called "JE(E)", in the Department of Power, Government of Arunachal Pradesh. On 14.7.1997, the petitioner was appointed on officiating basis to a vacant post of Assistant Engineer (Electrical), hereinafter referred to as AE(E). Similar to the petitioner, 5 other persons were also appointed, on 20.8.1997, as AE(E) on officiating basis against vacant posts. As per the Arunachal Pradesh Power Engineering Service Rules, 1993 (hereinafter referred to as "the relevant Recruitment Rules"), a diploma holder with 10 years' experience in the grade of JE is eligible for promotion to the post of AE. Being a diploma holder, the petitioner became eligible for promotion to the post of AE(E) on 12.5.1998. The petitioner, accordingly, on 26.5.1998, made a representation to the Commissioner to the Government of Arunachal Pradesh, Power Department, seeking promotion to the post of AE(E) with effect from 12.5.1998 on the ground that he had become eligible for such promotion with effect from 12.5.1998 and he had been performing the duties and functions of AE(E) on ad hoc/officiating basis against a vacant post. No action was taken by the authority aforementioned on the representation of the petitioner. Thereafter, in Civil Rule No. 5942/1998, this Court by order, dated 27.11.1998, directed the respondent-authorities to consider the petitioner's representation for regularization of his*

*officiating promotion. While disposing of the representation, as directed, the Commissioner of Power, vide order, dated 12.3.1999, directed that the petitioner's case would be processed for regular promotion subject to availability of vacancy with effect from the date when he had completed the requisite qualifying period of service, i.e., with effect from 12.5.1998. There were altogether 12 vacancies in the posts of AE(E) in the promotional quota and all these posts were physically occupied by the incumbents on officiating basis including the petitioner. As per the recommendations of the Departmental Promotion Committee, (for short, "DPC"), the petitioner has, now, been granted regular promotion to the post of AE(E), but the promotion, so granted, has been made effective from 12.3.2001. The petitioner's grievance is that his promotion ought to have been granted with effect from 12.5.1998, when he had become eligible for promotion, for, there was a vacancy available for such promotional appointment and the petitioner had been functioning as AE(E) on officiating basis uninterruptedly since long before 12.5.1998 until regularization of his promotion on 12.3.2001.*

*4. In the case at hand, the facts are not under any controversy. It is not in dispute that the petitioner became, under the relevant Recruitment Rules, eligible for promotion on 12.5.1998. It is also not in dispute that on the date, when the petitioner became so eligible for promotion, he was occupying the promotional post and he continued to do so until the time he was granted regular promotion on 12.3.2001. It is also important to bear in mind that it is not in dispute that the post of AE(E) which he kept occupying belonged to the quota of promotees in the Department concerned and that even the ultimate promotion granted to the petitioner is also in respect of the post, which falls under the promotional quota. In the face of these admitted facts, there can be no escape from the conclusion that when the respondent-authorities, eventually, decided, on the recommendations made by the DPC, to promote the petitioner to the post of AE(E), his promotion ought to have been allowed to relate back to the date when he had become eligible for such promotion, because vacancy for granting him such promotion was available and he was, in*

*fact, holding the post, though on ad hoc/officiating basis. This position is not, in fact, seriously disputed before me. Reference may, however, be made to B.S. Yadav v. State of Haryana, reported in (1980) suppl SCC 524, Narendra Chadda v. Union of India, reported in (1986) 2 SCC 157, Direct Recruits Class-II Engineering Officers Association v. State of Maharashtra, reported in (1990) 2 SCC 715'.*

*5. Coupled with the above, it is also imperative to note that it has not been contended, on behalf of the State-respondent/authorities concerned, that granting of such promotion, as the petitioner has sought for, would make the petitioner senior to some one, who is not junior to the petitioner as on today.*

*6. On considering, therefore, the matter in its entirety, I find that the respondent-authorities have completely failed to show any justification for not granting promotion to the petitioner with effect from the date, when he became qualified for receiving promotion, i.e., with effect from 12.5.1998.*

*7. In the result, and for the reasons discussed above, this writ application succeeds and the respondent-authorities are hereby directed to pass necessary order/orders making the petitioner's promotion to the post of AE(E) effective from 12.5.1998."*

(ix) In **Techi Jobe vs. State of Arunachal Pradesh** (supra) the this Court has held as follows:- para 16, 17

*"3. In order to correctly appreciate what the grievance of the present petitioner is, it is apposite to take note of the facts with which respondent Nos. 4 and 5 came to this Court with the writ petition made under Article 226, which gave rise to WP(C) No. 196(AP)/2001, and the reasons, which impelled the Court to issue directions to the State respondents to count the promotion of the respondent Nos. 4 and 5 herein to the post of AE with effect from 10.06.1999, i.e. the date on which they had, admittedly, become eligible for promotion to*

*the post of AE.*

*7. In the circumstance indicated above this Court observed and directed as under:-*

*“6. Upon hearing learned counsel for the parties and upon perusal of the materials on record, what I notice is that both the petitioners are degree-holders in Engineering and both of them were appointed on 10.06.94 as Junior Engineers in the Department aforementioned. There is no dispute before me that being degree-holders in Engineering, the petitioners became, according to the relevant recruitment Rules, eligible for promotion to the post of Assistant Engineers in the same Department as far back as on 10.06.99. There is also no dispute before me that the petitioners were, eventually, promoted to the post of AE as late as on 30.03.2001 despite the fact that clear vacancies in the promotional posts of AE did exist even on 10.06.99.*

*7. Situated thus, there is, I find, no cogent and justified reason or the omission of the department concerned not to accord promotion to the petitioners with effect from 10.06.99, particularly, when the petitioner Nos. 1 and 2 have been working as ad-hoc AE since 07.03.01 and 11.07.96 respectively.*

*8. Considering, therefore, the matter in its entirety, this writ petition is allowed with direction that the petitioners' promotion to the posts of Assistant Engineer shall be counted with effect from 10.06.99, that is, the date on which the petitioners became, admittedly, eligible for promotion to the posts of Assistant Engineer subject to the condition that the promotion of the petitioners to the posts of Assistant Engineer with effect*

*from 10.06.99 shall not adversely affect the position in the gradation list of any person(s), who may be senior to the petitioners.*

*7. It is contended by Mr. B.C. Das, learned Senior counsel, appearing on behalf of the present petitioner, that merely because of the fact that a person becomes eligible for promotion, it does not necessarily mean that the Government must give him promotion, for, according to Mr. Das, it is open to the Government not to fill up a promotional post, but to keep it lying vacant, because it would depend on the Government, its resources and requirement whether it shall fill up a promotional post or not.*

*8. While there can be no dispute with the proposition of law as advanced by Mr. Das, learned Senior counsel, what must be borne in mind is that the right to be considered for promotion is no longer an ordinary right, but it is as momentous as a fundamental right in the sense that, on becoming eligible for promotion, a person has the right to be considered, ordinarily, for promotion, provided he falls within the zone of consideration. Hence, when such a person has a right to be considered for promotion, there has to be clear and conscious decision by the Government not to fill up the post by way of promotion if the Government has to deny to such a person his right to be considered for promotion.*

*9. It is, therefore, incumbent, on the part of the Government, to ensure that DPC is constituted and the DPC considers the eligibility and suitability of a person for promotion depending upon the conditions of promotion as may have been embodied in the relevant recruitment rules. When a person, thus, becomes eligible for promotion by the DPC is an invaluable right. What, therefore, logically follows from this proposition is that when a person*

*becomes eligible for promotion and post is available for making the promotion, Government cannot avoid considering such a person's case for promotion unless it takes a decision, consciously and clearly, not to fill up the promotional post.*

*10. In the case at hand, there was, admittedly, no decision by the Government for not filling up the promotional post. The posts, though were available, had been left lying vacant, because of Government's sheer negligence, which means nothing but dereliction of duty by those, who had the responsibility to consider the cases of the responsibility to consider the cases of the respondent Nos. 4 and 5 herein for promotion.*

*11. Depending upon the date of the DPC, the effective date of promotion of a person cannot be decided, because DPC is required to meet every year. Therefore, the fact that DPC had not been constituted or did not sit at the time, when respondent Nos. 4 and 5 had become eligible for promotion, cannot be made a ground to deny to the respondent Nos. 4 and 5 herein promotion with effect from the date, when they had become due for promotion, particularly, when the posts of AE, in order to be filled up by promotion, were, admittedly, lying vacant and there was no conscious decision by the Government not to fill up the said posts.*

*16. While considering the above submission of Mr. Das, it needs to be noted that the right of being impleaded in a proceeding before a Court, in a case of present nature, is the demand of the principles of natural justice that a person's right shall not be made to be adversely affected without giving him a n opportunity of being heard; but if such denial has taken place, the person, who challenges a judicial order on the ground that he had not been heard, must be able to show as to what prejudice has been*

*caused to him by such denial. For this purpose, he is duty bound to show as to what he would have stated, had he received the opportunity.*

*17. In the case at hand, the writ petitioner has, admittedly, submitted, now, whatever he would have submitted, had he been impleaded as a party in the earlier writ petition. What he submits, now, could not have stopped the Court from taking the decision, which it took in the earlier writ petition inasmuch as the decision, taken earlier in the face of the admitted facts and the law contained in that behalf, cannot be said to be wrong or incorrect.*

*18. What emerges from the above discussion is that the petitioner herein has not been able to make out any case warranting this Court's interference with its own directions, given by the judgment and order, dated 11.11.2002, nor has the petitioner been able to make out any case for obtaining directions that he shall be treated as senior to the respondent Nos. 4 and 5."*

**44.** To rebut the learned counsel for the petitioners, the learned counsel for the State respondents has relied on the following judgments:-

(i) In the case of **Rashi Mani Mishra and ors. Vs. State of Uttar Pradesh and Ors.** reported in 2021 (5) SCC 186 the Hon'ble Apex Court has held which is reproduced herein below:-

*"8. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time: initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The*

*resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.*

9. *Now, so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.*

10. *Similarly, the decisions of this Court in the case of Rudra Kumar Sain (supra), relied upon by the learned counsel appearing on behalf of the ad hoc appointees also shall be applicable to the facts of the case on hand, In the case before this Court, the promotees appointed on ad hoc were continued for fairly long periods and their appointments were made after due consultation with, or approval of Service Commission, and therefore their appointments were held not to be ad hoc or fortuitous or stopgap. It is to be noted that in the present case when the ad hoc*

*appointees were appointed in the year 1985, there was no consultation with the UPSC and as such there was no recommendation by the UPSC. Their services came to be regularized as per the 1979 Rules and after they were selected by the Selection Committee constituted under the 1979 Rules, which specifically provides that for the purpose of regularization of ad hoc appointments, the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary. It is also noted that when the ad hoc appointees were appointed in the year 1985, they were appointed on the basis of the recommendations of the Selection Committee constituted for ad hoc appointments and when subsequently their services were regularized and they were appointed in the year 1989, they were appointed by the order of Governor. This is one additional ground to hold that their substantive appointments can be said to be only from the date of their regularization/appointment made in the year 1989 after their names were recommended by the Selection Committee constituted under the 1979 Rules and their services were regularized as per the 1979 Rules after following the procedure as required under the 1979 Rules, i.e., in the year 1989. Therefore, their seniority is to be counted only from 23.02.1989, the date of their regularization and the services rendered by the ad hoc appointees prior thereto, i.e., from the date of their initial appointments in the year 1985 is not to be counted for the purpose of seniority, vis-à-vis, the direct recruits appointed prior to 1989.*

*11. In view of the above and for the reasons stated above, all the appeals succeed. The impugned judgments and orders dated 19.09.2016 passed in Writ-A No. 18925/2016 and 13.03.2018 passed in SERB No. 13832/2017 passed by the High Court of Judicature at Allahabad and judgments and orders dated 03.07.2018 in Writ Petition (S/B) No. 204/2007 and 30.08.2007 and 30.08.2018 in Writ Petition (S/B) No. 203/2007 passed by the High Court of Uttarakhand are hereby quashed and set aside. The re-determination of the seniority and the revised seniority list dated 22.03.2016 counting the services of the ad hoc appointees prior to 23.02.1989 and counting the services as ad hoc from 12.06.1985 for the purpose of seniority is hereby quashed and set aside and the final seniority list dated 14.12.2001 fixing the seniority considering the services rendered by ad hoc appointees from 23.02.1989 is hereby restored. Necessary consequence shall follow. No costs."*

(ii) In the case of **Imlikokla Longchar and Ors. vs. State of**

**Nagaland** (supra) the hon'ble Apex Court has held as follows:-

*“10. In the appeals arising out of W.P. (C) No. 173(K) of 2007 and W.P. (C) No. 284 (K) of 2007, a Division Bench of the High Court in a common judgment delivered on 14th September 2012, interalia, held: “20. We have considered the reason as assigned by the learned Single Judge but unfortunately we cannot agree to such proposition of law. It is well settled that the recommendation of the D.P.C. is not binding upon even on the appointing authority. It is merely recommendation and the appointing authority has to examine the recommendation whether those were appropriate or not. The recommendation is an opinion of the expert for consideration of the appointing authority. The appointing authority thought it appropriate to reconvene the D.P.C. for arriving at a decision. It appears from the D.P.C. minutes that there was no consideration of the Nagaland State Council of Educational Research and Training Services Rules as was given effect from 30.04.2007 and hence the D.P.C. in all the cases made recommendation without relevant consideration of the said rules, and their consequences for far regularization of the Sr. Lecturer was concerned and treaded a wrong premise. The D.P.C. did not look into the matter whether the private respondents have completed the required continuous qualifying service of 5 years in the feeder grade or not. Apart that, the law is well settled that the executive is well within its jurisdiction to reconvene to D.P.C. but while operating any regularization retrospectively it has to take care that no prejudice is caused to the incumbent already in the cadre. Moreover, being in the grade on regular appointment. Unless the qualifying service as prescribed is complete in the grade, there cannot be any lawful consideration.*

*21. Be that as it may in this case, the question that has been taken for consideration by this Court is confined to whether the State respondents No. 1 and 2 have acted in accordance with the provision of law while accepting the recommendation of the D.P.C. The answer is bound to be in the negative. The relevant*

*provision as to the qualifying service as appearing in the Nagaland State Council of Educational Research and Training Services Rules, 2003, as given effect from 30.04.2007, was not at all considered by the D.P.C. while making recommendations for regularization in the post of Sr. Lecture and as such both the recommendations of the D.P.C. as well as the notification, consequent thereupon, dated 08.11.2007 (Annexure C to the Affidavit in opposition filed by the respondent No. 1.) stand quashed.*

*22. This Court would not interfere with that part of the notification whereby the private respondents have been appointed in the cadre of Lecturer. This order has to be confined for the cadre for the Sr. Lecturer only. As consequential thereof, the respondents No. 1 and 2 are directed to take immediate steps for reconvening of the D.P.C. for purpose of fresh recommendation for regularization of the private respondents in the post of Sr. Lecturer on strict observance of the rules: as provided in the schedule appended to the said Rules, 2003 (effective from 30.04.2007) and thereafter to issue the appropriate order of promotion in the post of the Sr. Lecturer.*

*23. As corollary to this, the impugned seniority list is also struck down. The seniority position can only be settled after the reconvening of the D.P.C. for promotion to the post of Sr. Lecturer in terms of the provisions of the Nagaland State Council of Educational Research and Training Services Rules, 2003.*

*24. It is made clear that the private respondents who are now occupying the post of Principal of DIETs on officiating basis would be allowed to continue in their positions but that shall remain subject to the outcome of the recommendation of the D.P.C. and the consequential orders of promotion as would be made by the respondents No. 1 and 2".*

*11. In the two writ petitions registered as W.P.(C) No. 231 (K) of 2015*

*and W.P. (C) 169 (K) of 2016, K had sought to quash the fresh DPC recommendations coming from the meeting held on 2nd November 2015. The earlier seniority position of K was retained by the DPC in their recommendation made in this meeting. The Single Judge allowed the writ petitions against which the appellants appealed before the Division Bench. The Division Bench dismissed the appeals, holding:*

*“34. It is reiterated, at the cost of repetition, that the Division Bench had, in clear terms, directed the State respondent nos. 1 and 2 to take immediate steps for reconvening of the DPC for the purpose of fresh recommendation for regularisation of the appellants in the post of Senior Lecturer in strict observance of the rules, as provided in the Schedule appended to the NSCERT, Service Rules, 2003, and thereafter, to issue appropriate order of promotion in the post of Senior Lecturer. After noticing the provisions in the NSCERT Service Rules, 2003, the Division Bench had observed that continuous qualifying service of 5 (five) years in the feeder grade of Lecturer is an essential requirement for the purpose of promotion to the post of Senior Lecturer. It was in that context the Division Bench had observed that the DPC when it held its meeting on 04.10.2007, did not take into consideration the NSCERT Service Rules, 2003 which had come into effect in the meantime from 30.04.2007, as consideration of the said Rules was relevant so far as regularisation of the appellants in the cadre of Senior Lecturer. The Division Bench had further observed that while operating any regularization retrospectively, care has to be taken that no prejudice is caused to the incumbent already in the cadre. Though the Division Bench had not indicated in express terms about the incumbent stated to be already in the cadre but it had impliedly referred to the respondent no.4 as the incumbent already in the cadre and directed the State respondents not to cause any prejudice to the said incumbent. As already noted above, the Division Bench had considered the status of the respondent no. 4 in the post of*

*Senior Lecturer and did not observe any irregularity in the matter of regularisation of service of the respondent no. 4 in the post of Senior Lecturer w.e.f. 16.01.2004. In view of such settled position, it is no longer open for the appellants to attempt any other interpretation. The said position had been reiterated by the learned Single Judge in the judgment and order dated 03.08.2015 when the DPC held on 03.03.2014 reiterated its earlier decision taken in the DPC meeting held on 04.10.2007, by setting aside the said Minutes dated 03.03.2014. The said position was accepted by the present appellants and the State respondents as they had never assailed the same. The contention raised by the present appellants and the State respondents to the effect that the NSCERT Service Rules, 2003 were not in force in the year 2007 when the promotions were given to the appellants, was negated by the learned Single Judge in W.P.(C) No. 126(K)/2014. The learned Single Judge in its judgment and order dated 03.08.2015, had set aside the impugned recommendation of the DPC dated 03.03.2014 with the direction to hold the DPC afresh in accordance with the direction given by the Division Bench on 14.09.2012.*

*35. The contention raised in support of the decisions taken in the meeting of the DPC held on 02.11.2015 is not acceptable in view of the authoritative pronouncement of the Division Bench in its order dated 14.09.2012. The DPC cannot overrule what had been pronounced by the Division Bench and reiterated by the Single Judge of this Court, as mentioned above, and the DPC cannot reinterpret the position what has already been settled. Thus, the learned Single Judge after due consideration of the matter in its entirety, is absolutely justified in W.P. (C) No. 231(K)/2015 in setting aside the proceedings of the DPC held on 02.11.2015 by holding that the same were in clear infraction of the judgment and order dated 14.09.2012 passed in W.A. No. 20(K)/2011 and W.A. No. 21(K)/2011, as has been quoted*

*above”.*

*14. The appellants had entered the service as lecturer on contractual basis in the year 1992/93 around the same time K had joined as senior lecturer, also on contract basis. For the purpose of determining the length of service in the feeder posts as contained in Schedule II of the 2003 Rules, the time spent on contractual basis cannot be factored in. If that yardstick is applied, then K's case for seniority in the grade of senior lecturer will have to be computed from the year 1993 only. Even if we proceed on the basis that the retrospective effect given to regularisation of the appellants in the post of lecturer is valid, then also, 15th January 2001 becomes the starting point for calculating five years of service length in the feeder cadre. They were given promotion on officiating basis as senior lecturers with effect from 14th November 2003 (for A1 and A2) and 20th January 2001 (for A3 and A4). Thus, the requisite five year period could not have been completed by any of them if the retroactivity of their regularisation order in the post of senior lecturer is to be accepted. The period spent in a promotional post on officiating basis cannot be permitted to be factored in for calculating length of service in a particular post. Unless the Rules otherwise provide, officiation in a particular post cannot encadre the incumbent in that post. We have already referred to different authorities laying down this proposition of law earlier in this judgment. Birth in the cadre takes place only upon regularisation in a grade and there is no provision in the 2003 Rules which prescribes encadring a person in the post of senior lecturer during the period such person officiates in the said post. So far as length of service in feeder post is concerned, that also has to exclude the contractual period during which the appellants served as lecturers, once we apply this principle.*

*15. The appellants had no doubt completed three years of service in the feeder grade on operationalisation of 2003 Rules on 30th April 2007. But so far, the said Rules seek to give them regularisation in the*

*cadre of senior lecturer with effect from 2003 and 2001 respectively, their service in the feeder grade do not meet the required stipulation of five year period. Judgment of a Coordinate Bench in the case of Girish Kumar vs. State of Maharashtra and Others [(2019) 6 SCC 647], construed the term 'continuous service' in relation to the specific rules this Court was dealing with in that case. So far as the present appeal is concerned, the ratio of this judgment would not be applicable because the appellants here did not fulfill the eligibility requirement for being promoted to the post of senior lecturer. If retroactivity of order is given effect to for calculating the officiating period, as we have already observed, time spent as officiating senior lecturer could not be deemed to be the dates of their birth in the cadre of senior lecturer. In Girish Kumar (supra), it has also been held that such interpretation shall not be applicable while considering eligibility criteria. In the present appeal, one of the eligibility criterion is five years continuous service in the feeder post. We cannot ignore this factor and proceed on the basis as if the term continuous service is being construed only for determining interse seniority in the promotional post. We are testing here if the appellants' entry in the promotional cadre was as per the eligibility criteria or not. In our opinion, it was not. To hold otherwise would require entire stretch of K's service in the post of senior lecturer since 1993 to be taken into account for determining the interse seniority among the appellants and K.*

*16. For these reasons we do not wish to interfere with the judgment under appeal. The authorities to take steps on the basis of seniority positions of the appellants and the respondent no. 4 in terms of this judgment. The appeal is dismissed."*

(iii) In the case of **Amit Singh vs. Ravindra Nath Pandey and Ors.** reported in Civil Appeal Nos. 8324-8327 of 2022 the hon'ble Apex Court has held as follows:-

*"20. This Court in the case of **Pawan Pratap Singh and***

**others vs. Reevan Singh and others** observed thus:

*‘44. The Constitution Bench of this Court in Direct Recruit Class II Engg. Officers’ Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC [L&S] 339 : (1990) 13 ATC 348] stated the legal position with regard to inter se seniority of direct recruits and promotees and while doing so, inter alia, it was stated that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.*

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

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

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

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

*(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.’*

*21. This Court in the said case held that the effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on*

*which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. This Court further held that the inter se seniority in a particular service has to be determined as per the service rules. It is held that the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. It further held that any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. It further held that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is held that the seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.*

*22. A bench of three learned Judges of this Court in the case of **P. Sudhakar Rao and others vs. U. Govinda Rao and others** has approved the law as laid down by this Court in the case of **Pawan Pratap Singh and others (supra)**.*

*28. In the result, we find no merit in the present appeals. The appeals deserve to be dismissed and, as such, are dismissed."*

**45.** After careful consideration of the above observations and principles of law enunciated by the Hon'ble Supreme Court and this Court, this court would/could not have any disagreement with the same as the observations are on the facts and circumstances of the particular contextual facts. There would not be any quarrel with the principles of law as enunciated above by the Hon'ble Supreme Court. This Court is of the view that the cases referred to above by the learned Counsel have no automatic or universal application in the facts of the present case as all the decisions and propositions of law have been rendered on the attending facts and circumstances of each of those case, except the case of Meyum Karga (supra) as the same appears to be relevant on facts and law. This Court is also of the view that there is no absolute bar for granting promotion/regularization with retrospective effect under the law and it would depend on the attending facts and circumstances of particular case.

**46.** This Court is not oblivious of the settled principle of law by the Hon'ble Supreme Court in a series of decisions including the above cases relied on by the parties that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post. However, with utmost respect, this Court is of the view that there would not be a complete bar for consideration of the promotion/regularization from the date of *adhoc* promotion particularly where the incumbent is promoted on *adhoc* basis on clear vacancy and allowed to continue without break with all benefits of that post being eligible in all respects due to delay in conduct of DPC for long period of fourteen (14) years or so. The delay on the part of the DPC in convening its meeting should not result in a prejudice to the petitioners who were eligible for promotion and ought to have been promoted but were not considered with reference to the year in which the vacancy arose.

**47.** Reverting back to the present case, as noted above, on a combined reading of the Recruitment Rules, 1996 as amended in 2005, OM dated 20.04.2000 and also OM dated 22.12.2000, it transpires that for promotion to the post of AE(C) an incumbent in the cadre of JE must have five (5) years of regular service for degree holders, the Recruitment Rules, 1996 as amended in 2005, is silent about the mode of appointments to the promotion post of AE (C) on *adhoc* basis, however, it seems to have been supplemented by the OM dated 20.04.2000 whereby it provides that for *adhoc* promotion against the promotion vacancies it is to be made only from those officers who fulfill the eligibility condition prescribed in the Recruitment Rules. Admittedly the petitioners were appointed/promoted as AE (C) on *adhoc* basis on the existing vacancies on 09.05.2006 and 06.06.2006.

**48.** The respondent authorities, on the recommendation of the DPC promoted twenty-one (21) JEs to the post of AE (C) on *adhoc* basis and their services have been regularized from various dates, more particularly from the year 1996 and 1999. The petitioners could establish that they were promoted to the post of AE (C) on *adhoc* basis with scale of pay on the clear existing vacancies in the year 2006. Though in their promotion orders it is clearly stated that the promotion is purely on *adhoc* basis and will not be the basis for claim for regular appointment as AE and *adhoc* service rendered will not be counted for the purpose of promotion. However, it is also provided by the qualified sentence expressly that "*unless the promotion is regularized by the regular DPC in conformation with the Recruitment Rules*".

**49.** The petitioners had all the requisite eligibility for promotion in terms of the Recruitment Rules, 1996 at the relevant point of time when they were promoted on *adhoc* basis, more so they became eligible in the year 1999 and 2001 respectively. The petitioners being Graduates in Civil Engineering having more than five (5) years regular service in the feeder grade, senior-most APST JEs and also having passed the Promotional Accounts Examination in the year 2000 and falls for consideration as the APST candidates within the 80:20 ratio of Reservation Policy of the State within the promotional quota, the petitioners are entitled to be promoted/regularized by the DPC w.e.f. the date of *adhoc* promotion in view of the fact that there exist clear vacancies and the petitioners were allowed to work continuously on *adhoc* basis due to delay hopelessly in convening of DPC.

**50.** On perusal of the DPC minutes it transpires that DPC has considered the Recruitment Rules of 1996 for regularization of the *adhoc* promotions of AE (C) in the Department. The petitioners' names appear at serial nos. 1, 2 and 3 having passed their respective Departmental Accounts Examination on 25.06.2000. The findings of the DPC was that only twenty-three (23) *adhoc* AE(C) have completed twenty (20) to twenty-five (25) years as JEs in a feeder cadre and holding the post of AE(C) on *adhoc* basis since last four (4) to twelve (12) years against a clear promotional vacancy, the petitioners have rendered more than fourteen (14) years as *adhoc* AE(C). There is further finding to the effect that the officers from serial nos. 1 to 55 have either been promoted to the post of AE(C) on regular basis or retired from Government service on attaining the age of superannuation. The names of the petitioners which are placed at serial nos. 1, 2 and 3 for consideration of their regularization in the said minutes indicates that they are in the merit position being 1, 2 and 3 amongst the twenty-three (23) incumbents for consideration of regularization of their *adhoc* promotion. The Reservation Policy of the State of 80:20 ratio against promotional quota has been duly considered and there is specific finding that there is no candidate for general cadre in the said proposal. In terms of the Post Based Model Roster being maintained by the Department, the petitioners are placed at Roster nos. 39, 41 and 43 respectively.

**51.** As held above the justification for delay in convening the DPC by the respondent authorities cannot be accepted inasmuch as the same is not supported by any tangible

materials. The stand of the State respondents that the year-wise panel could not be prepared by promotional quota in the Department as no clear vacancy for the post of promotional quota was not available and the promotion of the petitioners against the direct recruitment quota which created the backlog in the direct recruitment also falls flat as the same is completely contrary to the record. Rather the petitioners could establish that they became eligible in the year 1999 and 2001 respectively and they were promoted on *ad hoc* basis in the year 2006 on existing clear vacancies which is supported by the materials on the record including the order by this Court passed in the above mentioned writ petition being WP(C) No. 292(AP)/2001 filed by respondent Nos. 1 & 2 and their various representations.

**52.** The submission that regularization of sixteen (16) *ad hoc* AEs including the petitioners with retrospective effect from the date of DPC, i.e. 07.09.2020 is as per the Government of India, Department of Personnel Training, order dated 01.07.1991 also appears to be misplaced in view of the fact that the said OM relates to the date from which the appointment would be deemed regular when the Government servant who is already holding a post on *ad hoc* basis and later selected by regular appointment thereto which indicates that it is a case of appointment on *ad hoc* basis. In the case at hand as per the Recruitment Rules, 1996, as well as OM dated 20.04.2000 indicates that post can be filled up on *ad hoc* basis as admittedly there were clear vacancies when the petitioners were promoted and were eligible in all respect.

**53.** The submissions of learned Additional A.G. that if the petitioners regularization is given with retrospective effect from the date of their *ad hoc* promotion same shall affect other AEs(C) who in the meantime have been appointed, their seniority will be adversely affected and the submissions that if the claims are allowed there are fifty-five (55) JEs whose position will be affected have also been considered by this Court only for rejection in view of the fact that the same are not supported by any materials on record. The further submissions of learned Additional A.G. regarding non-joining of necessary parties, this Court is of the view in the present proceedings that this Court is not called upon to determine the *inter se* seniority of the AEs(C) but determination is to whether the petitioners in the facts and circumstances of this case are entitled for regularization of their *ad hoc* promotions w.e.f. 2006. Therefore, it is difficult for this Court to accept the submission as the same is not discernable from the

materials available on record.

**54.** There would be no dispute to the settled position of law that the mere existence of vacancy *per se* will not create a right in favour of an employee for retrospective promotion. However, in the present case it is not mere existence of vacancy, in the considered opinion of this Court it is a case where the petitioners are eligible in all respect and there were clear vacancies at the time of their *adhoc* promotion and it is only due to delay in convening of DPC by the respondent authorities that deprived the petitioners from a fundamental right to be considered for promotion. The respondent authorities have not considered the case of the petitioners objectively and in proper perspective. Accordingly, this Court is of the considered opinion that the petitioners are entitled to be considered for promotion/regularization with retrospective effect.

**55.** In view of what I have discussed herein above and the conclusion that the petitioners are entitled to be considered for regularization/promotion from the date of their *adhoc* promotion, i.e 09.05.2006 and 06.06.2006 as they are eligible in all respect and in terms of the Recruitment Rules, 1996, as amended in 2005 and the OMs, DPC recommendation dated 07.09.2020 regularizing the petitioners w.e.f. the date of DPC i.e. 07.09.2020 and the consequent order dated 05.10.2020 deserve to be interfered with in so far as it relates to conferring of effective date from the date of DPC.

**56.** Accordingly, the recommendation for regularization w.e.f. the date of DPC, i.e. 07.09.2020 is set aside.

**57.** In the result, the writ petition is allowed and disposed of with a direction to the respondent authorities to review the case of the petitioners afresh by convening DPC for promotion/regularization of their services as AEs(C) in the Department of PHE&WS with retrospective effect. No order as to cost.

**JUDGE**

**Comparing Assistant**