



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

Case No. : WP(C)/156/2022

SHRI. MHONCHUMO T. KIKON AND 4 ORS
(RETD.CLERK HAVILDAR),
H/NO.379, LANE - 13, DAROGAJAN, DIMAPUR,
PIN CODE - 797116

2: SHRI. RONGSENNANGBA

(RETD.CLERK HAVILDAR)

H/NO.55
HILL VIEW COLONY
DIMAPUR

PIN CODE - 797112

3: SHRI. TSUKTIWAPANG AO

(RETD.CLERK HAVILDAR)

H/NO.378
MERAKUM MEPU
AOYIMKUM

DIMAPUR
PIN CODE - 797113

4: SHRI. RHANBEMO OVUNG
(RETD.CLERK HAVILDAR)

SANGTAMTILA VILLAGE
RANGAPAHAR CROSSING DIMAPUR
PIN CODE - 797112

5: SHRI. BESUVOYI SHIJOH

(RETD.CLERK HAVILDAR)

H/NO. 60
SEITHEKEMA B
DIMAPUR

PIN CODE - 79710

VERSUS

THE UNION OF INDIA AND 14 ORS
REPRESENTED BY THE SECRETARY,
KENDRIYA SAINIK BOARD,
GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, R. K. PURAM, WEST
BLOCK,
NEW DELHI, VASANT VIHAR - 110066 2:THE HOME COMMISSIONER TO
THE GOVERNMENT OF NAGALAND

HEAD OF ADMINISTRATION
DEPARTMENT OF EX-SERVICEMEN WELFARE AND RESETTLEMEN

GOVERNMENT OF NAGALAND
PIN CODE - 797001

3:THE SPECIAL SECRETARY

GOVERNMENT OF NAGALAND
HOME DEPARTMENT - POLICE 'B' BRANCH

PIN CODE - 797001

4:SGT. INAHO SUMI RTD.
C/O DIRECTORATE OF SAINIK WELFARE AND RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O. KOHIMA - 797001

5:PETTY OFFICER R. TALIMEREN
RTD

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

6:SGT. NGUKAVI KINIMI RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

7:SGT. AKUMTIBA PONGENER
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

8:HAV. IMLATEMSU
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

9:NK.SUB. K. CHUMTHUNGO EZUNG
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND

SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

10:NK.KHECHELO SEMY
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

11:SMTI. MHOZEINO

DEPENDENT OF ESM

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

12:NK.SUB.T. ACHEM SANGTAM
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

13:HAV. R. ZUBENTHUNG TUNGEO
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

14:SGT. MHONCHUMO NGULLIE
RTD.

C/O DIRECTORATE OF SAINIK WELFARE AND
RESETTLEMENT
KOHIMA
HOME DEPARTMENT

GOVERNMENT OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD P.O.KOHIMA - 797001

15:THE DIRECTOR
SAINIK WELFARE AND RESETTLEMENT
KOHIMA. HOME DEPARTMENT
GOVT. OF NAGALAND
SEPFUZOU COLONY ABOVE ALDER COLLEGE
HIGH SCHOOL ROAD
P.O KOHIMA-79700

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : CGSC

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 19-03-2024

The petitioners, 5 [five] in nos., have joined together to institute the present writ petition under Article 226 of the Constitution of India stating that they have a common cause of action and they have a common grievance. Assail is made to a Notification bearing no. POL-B/SWR.ESTT-1/2/20[PT] dated 21.07.2022 published by the Home Department, Police 'B' Branch, Government of Nagaland whereby the State respondents have published a select list containing the names of 11 [eleven] nos. of candidates, who have been shown to be appointed to the vacant posts of Head Assistant [District], Accountant, Upper Division Assistant [UDA], Welfare

Officer and Lower Division Assistant [LDA] respectively, on recommendation of the Selection Board. For the two posts of Head Assistant [District], the respondent no. 4 and the respondent no. 5 have been shown selected and appointed whereas the respondent no. 6 has been shown selected and appointed to the lone post of Accountant. The respondent no. 7 to respondent no. 11 have been shown selected and appointed to the five posts of UDA. The respondent no. 12 and the respondent no. 13 have been shown selected and appointed to the two posts of Welfare Officer whereas the respondent no. 14 has been shown as the selected and appointed candidate to the lone post of LDA. The appointees were directed to join in the posts within 30 days from the date of issuance of the Notification dated 21.07.2022. Apart from seeking setting aside and quashing of the appointments of those 11 [eleven] appointees, who have been arraigned as the party-respondent nos. 4 to 11 in this writ petition, the petitioners have also sought for a direction in the nature of mandamus to the respondent authorities to prepare a fresh select list strictly in accordance of the terms and conditions of the Advertisement dated 12.02.2020.

2. The genesis of the *lis* is traceable to a Press Release/Advertisement bearing no. POL-B/SWR/ESTT/1/1/2018 dated 12.02.2020 published by the Home Department, Police 'B' Branch, Government of Nagaland, whereby, applications along with all relevant documents were invited from eligible ex-Serviceman who should be retired Army, Navy and Air Force Commissioned Officers and Personnel Below Officers Rank [PBOR]. By the Advertisement, applications were invited for a nos. of different categories of posts. In so far as the present writ petition is concerned, the following Class-III & Class IV [Non-Gazetted Post] vacancies are of relevance :-

Ser No	Name of Post	No of post	Scale of Pay plus other allowances [Rs.] [Pay Matrix]	Requisite rank held in the Army of equivalent rank in Navy & Air Force
Class – III & IV [Non-Gazetted]				
[5]	Head Assistant [District]	02	Level 10	JCO/HV Clk
[6]	UDA [Directorate/District]	05	Level 07	JCO/HV Clk

[6]	Welfare Organizer [District]	02	Level 07	JCO/NCO
[7]	Accountant [Directorate]	01	Level 08	JCO/HV Clk
[8]	LDA-cum-Typist [District]	01	Level 04	NCO Clk

3. As per the said Advertisement, the last date of receipt of applications for re-employment was 21.03.2020. The posts are in the Directorate of Sainik Welfare and Resettlement, Nagaland and the Zilla Sainik Welfare Offices, Nagaland. The Advertisement mentioned that the candidates were required to produce the original documents at the time of interview. Written and typing test for clerical post would be conducted to assess the suitability for re-employment. The petitioners and the respondent nos. 4 to 14 responded to the Advertisement by submitting their applications along with the testimonials. A Notice for Interview was published on 25.11.2021 informing that the interviews of the candidates who had applied in response to the Advertisement dated 12.02.2020 for re-employment of eligible ex-Servicemen against the posts in the Advertisement in the Directorate of Sainik Welfare and Resettlement, Nagaland and the Zilla Sainik Welfare Offices, Nagaland, would be conducted by a Selection Board constituted by the Home Department, as per the schedule indicated therein. The interviews for the posts of Head Assistant [District], UDA and Welfare Organizer [District] were scheduled on 14.12.2021. On the other hand, the interviews for the post of Accountant and LDA were scheduled on 15.12.2021.

4. Subsequent to completion of the interview process, the impugned Notification was issued on 21.07.2022 by publishing the select list for appointment to the posts of Head Assistant [District], Accountant, Upper Division Assistant [UDA], Welfare Officer and Lower Division Assistant [LDA] as follows :-

Sl	Name	Respondent no.	Appointment to the post of	Pay Matrix
1	Sgt. Inaho Sumu, Rtd	Respondent no. 4	HA[Dist]	Level-10
2	Petty Officer, R. Talimeren, Rtd	Respondent no. 5	HA[Dist]	Level-10
3	St. Nhukavi Kinimi, Rtd	Respondent no. 6	Accountant	Level-8
4	Sgt. Akumtiba Pongener, Rtd	Respondent no. 7	UDA	Level-7
5	Hav Imlatemsu, Rtd	Respondent no. 8	UDA	Level-7
6	Nk. Sub. K. Chumthungo Ezung, Rtd	Respondent no. 9	UDA	Level-7
7	Nk. Khechelo Semy, Rtd	Respondent no. 10	UDA	Level-7

8	Smt. Mhozcino dependent of ESM	Respondent no. 11	UDA	Level-7
9	Nk. Sub T. Achem Sangtam, Rtd	Respondent no. 12	Welfare Officer	Level-7
10	Nav. R. Zubenthung Tungoe, Rtd	Respondent no. 13	Welfare Officer	Level-7
11	Sgt. Mhonthumo Ngullie, Rtd	Respondent no. 14	LDA	Level-4

5. Aggrieved by and dissatisfied with their non-selection and, at the same time, selection and appointment of the party-respondent nos. 4 to. 14, the petitioners have approached this Court by the instant writ petition seeking the reliefs, mentioned hereinabove.

6. I have heard Mr. C.T. Jamir, learned senior counsel assisted by Mr. I. Imchen, learned counsel for the petitioners; Ms. V. Suokhire, learned Additional Advocate General, Nagaland for the respondent nos. 2, 3 & 5; and Mr. Joshua Sheqi, learned counsel for the respondent nos. 4 – 14.

7. Though the Union of India, represented by the Secretary, Kendriya Sainik Board, Ministry of Defence, Government of India, was made party-respondent no. 1 in the instant writ petition, the name of the respondent no. 1 stood deleted from the array of respondents at the instance of the respondent no. 1 itself, by virtue of an Order dated 05.10.2023 passed in an interlocutory application, I.A.[C] no. 123/2023. By an Order dated 05.09.2022 passed in an interlocutory application, I.A.[C] no. 142/2022, the respondent no. 15, that is, the Director of Sainik Welfare & Resettlement, Nagaland has been impleaded as party-respondent no. 15 in the array of respondents.

8. Mr. Jamir, learned senior counsel appearing for the petitioners has submitted that the petitioners were eligible to apply for the posts of Head Assistant [District], Accountant, Upper Division Assistant [UDA], Welfare Officer and Lower Division Assistant [LDA] respectively and accordingly, the petitioners had applied individually for the posts of HA[District], Accountant, UDA and LDA. As regards the selection of the respondent nos. 4 to 14, Mr. Jamir has submitted that the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14 did not meet the eligibility criteria on the last date of submission of applications, that is, on 21.03.2020. As regards the respondent no. 11, he has submitted that the respondent no. 11 does not come within the definition of 'ex-

Servicemen' and as such, the selection and appointment of the respondent no. 11 is illegal and de hors the terms and conditions of the Advertisement. In respect of the respondent no. 9, he has submitted that though the respondent no. 9 had applied only for the post of Welfare Organizer [District] but he has been selected and appointed to the post of UDA without there being an application for the post of UDA from his end. The challenge to the selection of the respondent no. 10 is on the ground with the contention that though the respondent no. 10 was discharged from service as a Clerk, but his rank at the time of discharge was Naib Subedar and he was only getting the financial benefits of the post of Havildar under the Modified Assured Career Progression [MACP] Scheme. Assail is made to the selection of the respondent no. 8 for the post of UDA on the ground that the respondent no. 8 though was a Havildar he was not a Clerk at the time of his discharge. It is the contention of Mr. Jamir that the respondent no. 8 was only a Store-Keeper. As regards the respondent no. 5, the petitioners have challenged his selection and appointment on the ground that he was a Petty Officer in the Indian Navy and at the time of his discharge, he was serving as Aircraft Fitter, meaning thereby, he was not serving in any clerical capacity. Lastly, Mr. Jamir has contended that applications in response to the Advertisement were not submitted by the respondent nos. 4 to 14 in the mode and manner prescribed by the Advertisement before the last date of submission of applications and on that ground only, their applications ought to have been rejected, but the respondent authorities making a departure illegally, had not only accepted those applications, but have also selected them.

9. Ms. Suokhire, learned Additional Advocate General, Nagaland appearing for the respondent nos. 2, 3 & 15 has submitted that as per the Explanation provided to the definition of 'ex-Servicemen', a person serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-Servicemen', can be permitted to apply for re-employment within a period of one year before completion of the specific term of the engagement. As the four respondents, that is, the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14 had applied within a period of 1 [one] year prior to the dates of their respective date of discharge, the State respondents considered their candidatures for selection and finding them suitable in the selection process,

their names were placed in the select list and they were offered the appointments. Special consideration was given to the respondent no. 11 as she was a younger sister of Late Lieut. Niekehakuo Kenguruse who died a martyr on 29.06.1999 in an enemy action during the Operation Vijay. It is the contention of Ms. Suokhire that since none of the petitioners had applied for the post of Welfare Organizer [District], they cannot, at this stage, mount challenge to the selection and appointment of the respondent no. 12 and the respondent no. 13, who have been selected and appointed against the two advertised vacant posts of Welfare Organizer. As regards the selection of the respondent no. 9 to the post of UDA, it is submitted that selection for appointment was done solely on the eligibility and suitability of the candidate and merits as per the marks obtained. The respondent no. 9 had all the requisite qualifications for being considered for the post in Group-C including the post of UDA besides the post of Welfare Organizer, as both the posts have the same Scale of Pay. In respect of the respondent no. 10, it is submitted that he was enjoying the benefits as Havildar at the time of his discharge. As regards selection of the respondent no. 8, it is submitted that the respondent no. 8 was Havildar and Store Keeper-cum-Clerk at the time of his discharge and his such credentials cannot be questioned by the petitioners. It is contended that the respondent no. 5 being a Petty Officer Aircraft Fitter in the Indian Navy, was eligible as the said post was equivalent to Havildar/Dafadar in the Indian Army and the same was the requirement in the Advertisement. It is further submitted that the respondent no. 1, the respondent no. 3, the respondent no. 4 and the respondent no. 14 were in the Indian Air Force and at the time of their discharge, they were in the rank of Sergeant and as per equivalence, they were equivalent to Havildar in the Indian Army. With such contentions, it is submitted that no case for interference has been made out by the petitioners.

10. Mr. Sheqi, learned counsel representing the respondent nos. 4 to 14 has submitted in similar lines as the learned Additional Advocate General, Nagaland. He has contended that the petitioners had participated in the selection process without any protest and as such, it is not open for the petitioners to challenge the selection and appointment of the respondent nos. 4 to 14 after being unsuccessful in their attempts for selection. In support of his such submissions, Mr. Sheqi has relied upon the decisions of the Hon'ble Supreme Court of India in Chandigarh

Administration and another vs. Jasmine Kaur and others, reported in [2014] 10 SCC 521; Ranjan Kumar and others vs. State of Bihar and others, reported in [2014] 16 SCC 187; and D. Sarojakumari vs. R. Helen Thilakom and others, reported in [2017] 9 SCC 478. He has further submitted that in so far as 'ex-Servicemen' are concerned, their re-employments are governed and regulated by the provisions of the Ex-servicemen [Re-employment in Central Civil Services and Posts] Rules, 1979, as amended, framed by the Ministry of Personnel, P.G. and Pensions, Government of India. As the respondent nos. 4 to 14 are ex-Servicemen and the Rules have permitted them to apply for the posts meant for ex-Servicemen within a period of 1 [one] year prior to the dates of their actual discharge, the State respondents are within their authority and jurisdiction to select and appoint all of them, more particularly, the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14. Mr. Sheqi has referred to the Equivalence of Ranks in three services of Armed Forces, provided in Appendix-Y, appended to a Circular dated 17.01.2013 of the Office of the Principal Controller of Defence Accounts [Pensions], Allahabad.

11. In response, Mr. Imchen, learned counsel for the petitioners has submitted that the basic qualification in terms of the Press Release/Advertisement dated 12.02.2020 is to be considered as on the last date of submission of application forms, that is, on 21.03.2020 and accordingly, eligibility or ineligibility of a candidate is to be adjudged. Referring to a decision of the Hon'ble Supreme Court of India in Civil Appeal no. 2023 in Special Leave Petition no. 12441 of 2022 [Sudhir Singh and others vs. State of Uttar Pradesh and others], decided on 30.10.2023, and reported in [2023] 14 SCR 135, he has submitted that a candidate has to apply fulfilling all the conditions of eligibility criteria, as per the Advertisement, on or before the cut-off date, mentioned therein. The appellants in Sudhir Singh [supra] applied in the category of 'ex-Servicemen' after obtaining no objection certificates from their employees but the Hon'ble Supreme Court has held that as on the last date of submission of application forms if they were employed with the Armed Forces, they could not be treated as ex-Servicemen. It is reiterated by Mr. Imchen that the respondent no. 5 and the respondent no. 8 had submitted their applications much after 21.03.2020 in violation of the manner of submission of application prescribed in Clause 6 of the Advertisement dated 12.02.2020 and in

view of the Judgment and Order rendered in a writ petition, W.P.[C] no. 176/2022, which was affirmed by the Division Bench vide an Order dated 06.03.2024 passed in an intra-court appeal, Writ Appeal no. 09/2024, the selection and appointment of the respondent no. 5 and the respondent no. 8 are also liable to be set aside and quashed. As regards the respondent no. 11, it is contended that being a member of the family of a martyr of Indian Armed Forces who died in enemy action, the respondent no. 11 might be eligible for appointment in other prevalent schemes, but not in the posts meant specifically for 'ex-Servicemen'.

12. I have given due consideration to the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also gone through the decisions referred to by the learned counsel for the parties.

13. The definition of 'ex-Servicemen' is found in the Ex-servicemen [Re-employment in Central Civil Services and Posts] Rules, 1979, as amended, [the Ex-servicemen Rules, 1979', for short], a set of rules framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The definition of 'ex-Servicemen' given in Rule 2[c] of the Ex-Servicemen Rules, 1979 came to be amended by way of substitution by the Ex-servicemen [Re-employment in Central Civil Services and Posts] Amendment Rules, 1986. After amendment and substitution, the definition of 'ex-Servicemen' reads as under –

[c] 'ex-Servicemen' means a person, who has served in any rank [whether as a combatant or as a non-combatant] in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Crops, the General Reserve Engineering Force, the Lok Sahayak Sena and the para military forces; and

[i] who has retired from such service after earning his/her pension; or

[ii] who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

[iii] who has been released, otherwise than on his own request, from

such service as a result of reduction in establishment; or

[iv] who has been released from such service after completing the specific period of engagement, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes personnel of the Territorial Army of the following categories, namely :

[i] pension holders for continuous embodied service;

[ii] persons with disability attributable to military award winners.

[iii] gallantry award winners.

Explanation : The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-Servicemen', may be permitted to apply for re-employment one year before the completion of the specified term of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.

14. On 18.03.2024, the learned Additional Advocate General, Nagaland was requested to produce the application forms of the petitioners as well as of the respondent nos. 4 to 14. The application forms of the petitioners as well as of the respondent nos. 4 to 14 have been placed before the Court today and the applications forms have also been perused by the learned counsel for the contesting parties. On perusal of the application forms of the petitioners, it is found that they were all in the ranks of Havildar and Clerk and as such, they were eligible, as on 21.03.2020, to participate in the selection process for the posts of Head Assistant [District], Accountant, UDA and LDA in question in terms of the Advertisement dated 12.02.2020.

15. A question has been further raised by the learned counsel for the respondents as regards the locus of the petitioners to maintain the present writ petition qua the respondent no. 12 and the respondent no. 13. On perusal of the applications submitted by all the five petitioners in response to the Advertisement dated 12.02.2020, it is found that none out of the five petitioners had applied for

the two posts of Welfare Organizer/Welfare Officer. Since none of the petitioners was aspirant for the two posts of Welfare Organizer/Welfare Officer, they cannot have a cause of grievance against the selection and appointment of the respondent no. 12 and the respondent no. 13 as Welfare Organizer/Welfare Officer. As none of the five petitioners herein had applied for the two posts of Welfare Officers, advertised in the Advertisement 20.02.2020, the petitioners' challenge to the selection of the respondent no. 12 and the respondent no. 13 is found not maintainable inasmuch as they did not apply for the said two posts. In such view of the matter, the petitioners' challenge to the selection and appointment of the respondent no. 12 and the respondent no. 13 is not entertained in the absence of a valid cause of action.

16. Eligibility or Ineligibility of the respondent no. 11 :- From the application form of the respondent no. 11, it is discernible that the respondent no. 11 in her application, had mentioned that she was a younger sister of Late Lieut. Niekehakuo Kenguruse, who died on 29.06.1999 due to multiple splint injuries during Operation Vijay. The respondent no. 11 has qualification of Bachelor of Commerce [Honours in Accounting and Finance] from the Nagaland University and is a trained Graduate Teacher as she has passed the Central Teacher Eligibility Test [CTET]. But none of her testimonials submitted with the application in response to the Notification dated 21.07.2020 goes to indicate that the respondent no. 11 is an ex-Serviceman, as defined in Clause 2[c] of the Ex-servicemen Rules, 1979, as amended. As per Clause 3 [Reservation of ex-Serviceman] of the Advertisement dated 12.02.2020, all posts are reserved for ex-Servicemen who come under the definition, as given in the official notification. Thus, the reason shown by the State respondents in Paragraph 14 of their affidavit-in-opposition that the respondent no. 11 being a sister of a martyr, who sacrificed his life for the defence of the nation during the Kargil War and was posthumously awarded Maha Vir Chakra, the Nations' second highest gallantry award, has been selected and appointed in the post of UDA is in clear violation of the terms and conditions of the Advertisement dated 12.02.2020 and the definition of ex-Serviceman, provided in the ex-Servicemen Rules 1979, as amended, and such reason cannot be countenanced as the issue of ineligibility goes to the root of the matter. The respondent no. 11 is found ineligible even to apply for any of the posts advertised by the Advertisement

dated 12.02.2020. Thus, her submission of application; acceptance of her application; and grant of permission to appear in the selection process by the State respondents; are found dehors the law.

17. Eligibility or Ineligibility of the respondent nos. 4, 6, 7 & 14 :- All four of them served in the Indian Air Force and at the time of discharge, the respondent no. 4, the respondent no. 6 and the respondent no. 14 were serving as Sergeant and the respondent no. 7 was serving as Sergeant [Acting]. In a Circular no. 501 dated 17.01.2013, issued by the office of the Principal Controller of Defence Accounts [Pensions], Draupadi Ghat, Allahabad, the aspect of equivalence of ranks in the three services of the Armed Forces has been dealt with and the respondents have relied upon the same in support of their case. Clause 5.5 to the said Circular no. 501 has mentioned, as a guidance, that equivalence of ranks of Junior Commission Officers [JCOs]/Other Ranks [ORs] in the Indian Army, the Indian Navy and the Indian Air Force would be in accordance with the Table given in the Appendix-Y thereto. From the Table in Appendix-Y thereto, it is found that a Sergeant in the Indian Air Force is equivalent to a Havildar/Dafadar.

17.1. The next issue for consideration as regards eligibility or otherwise of the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14 is with regard to their respective dates of discharge. Among the documents annexed to the affidavit-in-opposition filed by the respondent no. 4 to 14, the Service/Discharge Books of the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14 are found annexed. The Service/Discharge Books were issued by the Competent Authority recording the date of issuance as 30.06.2020. All of them were also given No Objection Certificates to the effect that they were permitted to register their names with employment exchange and to appear in any competitive examination and to apply for any civil post in Central/State Government organizations. There is no dispute to the fact that all of them had actually been discharged from service on 30.06.2020. It has been contended on behalf of the State respondents as well as by the respondent nos. 4, 6, 7 & 14 that the Explanation to Rule 2[c] of the Ex-Servicemen Rules, 1979, as amended, permitted them to apply for the posts advertised by the Advertisement dated 12.02.2020 as they were to be released

within a period of one year from 31.03.2020. On a closer scrutiny of the Explanation to Rule 2[c], it is noticed that in the Explanation, it is stipulated that a person serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-Servicemen', may be permitted to apply for re-employment 1 [one] year before completion of the specified term of engagement and avail himself of all concessions available to 'ex-Servicemen' but he shall not be permitted to leave uniform until he completes the specified term of engagement in the Armed Forces of the Union. Clause 6 of the Advertisement dated 12.02.2020 mandated that simple application in plain paper had to be accompanied by a set of documents indicated therein. One of the documents which was to be annexed with the application was a photocopy of Release/Discharge Certificate/Book. As mentioned above, the last date of receipt of applications in response to the Advertisement dated 12.02.2020, was 21.03.2020 and it is nobody's case that the last date of submission of application was extended beyond 21.03.2020. From the Explanation to Rule 2[c] of the Ex-Servicemen Rules, 1979, as amended, it is clear that as the actual date of discharge of the respondent nos. 4, 6, 7 & 14 was 30.06.2020, meaning thereby, all of them as on 21.03.2020, were in actual service in the Armed Forces of the Union. The Explanation does not permit them to leave the Union until they complete the specified terms of engagement in the Armed Forces of the Union.

17.2. At this stage, a reference to the decision in Sudhir Singh [supra] appears apposite. The three appellants therein were serving in the Armed Forces in various capacities, at the relevant time, when an advertisement was issued by the Uttar Pradesh Subordinate Service Selection Commission for recruitment to the post of Village Development Officer [VDO]. The registration for application commenced on 18.01.2016 and the last date of submission of the application forms was 10.02.2016. The appellants applied in the category of ex-Servicemen after obtaining no objection certificates from their employer. Initially, their results were withheld for various reasons but ultimately, they were issued appointment letters on 29.05.2019 and 27.05.2019 respectively on temporary basis. At a subsequent period, the appellants were issued show cause notices asking them as to why their appointments should not be held to be a nullity as on the last date of submission of application form, they were employed with Armed Forces and could not be treated

as ex-Servicemen. The Hon'ble Supreme Court has observed that none of the appellants could be said to have been ex-Servicemen at the time of the advertisement in question as, undisputedly, they were still in service. It has been held that the appellants cannot be deemed as ex-Servicemen from a prospective date despite being in actual service on the relevant date. It has been observed that there is no concept of serving personnel being deemed ex-Servicemen and it would not be proper for the court to hold or interpret otherwise. It is well settled proposition that ordinarily basic qualification is to be adjudged as on the last date of submission of application forms. A candidate has to apply fulfilling all the conditions and eligibility criteria as per the advertisement before the cut-off date mentioned in the advertisement or else, on the last date of receipt of the applications. The ratio laid down in *Sudhir Singh* [supra] in respect of ex-Servicemen is clearly applicable in respect of the respondent no. 4, the respondent no. 6, the respondent no. 7 and the respondent no. 14 in the case in hand.

17.3. The respondent no. 4, the respondent no. 6, the respondent no. 7 & the respondent no. 14 were clearly ineligible to apply for the posts in response to the Advertisement dated 12.02.2020 with the last date of receipt of the applications on 21.03.2020, as on 21.03.2020, they were in actual service in the Armed Forces of the Union and they do not satisfy the criteria for ex-Servicemen, as indicated in the Advertisement. The Advertisement dated 12.02.2020 required submission of photocopy of Release/Discharge Certificate/Book and the Service Books of the respondent nos. 4, 6, 7 & 14 indicate that their dates of discharge was 30.06.2020. As there is no concept on deemed ex-Servicemen, as has been held by the Hon'ble Supreme Court in *Sudhir Singh* [supra], the selection and appointment of [i] the respondent no. 4 to the post of Head Assistant [District]; [ii] the respondent no. 6 to the post of Accountant; [iii] the respondent no. 7 to the post of and UDA; and [iv] the respondent no. 14 to the post of LDA are not sustainable in law and are liable to be set aside and quashed. Their selections and appointments are accordingly set aside and quashed. As they are found ineligible on the count of not fulfilling the criteria of 'ex-Servicemen', the issue as regards equivalence in rank is not required to be further gone into.

18. Eligibility or Ineligibility of the respondent no. 9 :- In view of the specific

allegation made by the petitioners in respect of the respondent no. 9 that he had only applied for the post of Welfare Officer and did not apply for any of the other posts advertised in the Advertisement dated 12.02.2020, the original application form of the respondent no. 9 has been looked into. On perusal of the application form the respondent no. 9 submitted in response to the Advertisement dated 12.02.2020, on 26.09.2021, it is found that he had only applied for the post of Welfare Organizer. If a candidate in response to an advertisement inviting applications for a number of posts applies for one specific post out of many posts advertised, his application is to be considered only for the post the candidate has specifically applied for. In case of the respondent no. 9, it is found from the application itself that he had applied for post of Welfare Organizer. The respondent no. 9's stage of discharge was well within 21.03.2020. But the respondent no. 9 did not choose to apply for any other posts indicated in the Advertisement dated 12.02.2020, that is, Head Assistant [District] or Upper Division Assistant [UDA] or Accountant, etc. The State respondents by placing a Convening Order dated 23.11.2021, have sought to advance a contention that the Selection Board constituted for the purpose, had the discretion to examine the eligibility and suitability of a candidate with reference to the eligibility criteria laid down in the concerned Advertisement. From a glance at the Convening Order, it is discernible that the Convening Order was issued subsequent to the Advertisement dated 12.02.2020. On a query made to the learned Additional Advocate General, Nagaland, it is replied that the Convening Order does not mention about any mandate to publish the same by way of an addendum/corrigendum in the Official Gazette, etc. It is settled that the rules of the game cannot be changed in the mid-stream, once the game has started. When a candidate has chosen to apply for a specific post out of many posts advertised, it is clear that he is not interested to participate in the selection process to be initiated for those other posts. It is not open for the State respondents to contend that it would be open for the appointing authority to reserve a discretion to select a candidate according his eligibility and suitability in respect of any of the posts so advertised even if the candidate has not applied for those posts. Filling up a post by the candidate to which he did not apply would be in violation of principle embedded in Article 14 of the Constitution of India. Selection of a particular candidate for a post without the candidate having applied for the said post would deprive other candidates in the fray, who had

applied for the specific post. On that count alone, the selection and appointment of the respondent no. 9 for the post of UDA by the Notification dated 21.07.2020 is found unsustainable in law. Consequently, such selection and appointment is liable to be set aside and quashed and it is accordingly ordered. From the application which was submitted by the respondent no. 9 in response to the Advertisement dated 12.02.2020, placed before this Court today by the learned Additional Advocate General, it is also noticed that the respondent no. 9 had submitted his application only on 26.09.2021, which was much beyond the last date of submission of application on 21.03.2020. Such application of the respondent no. 9, submitted beyond the last date of receipt of application, is not acceptable for the reasons to be adverted to in the subsequent paragraphs and in view of the judgments rendered in a writ petition, W.P.[C] no. 176/2022 and in a writ appeal, Writ Appeal no. 09/2024.

19. Eligibility or Ineligibility of the respondent no. 10 :- The respondent no. 10 served in the Indian Army. In the Discharge Book, his date of discharge was recorded as 30.09.2018. As regards his rank is concerned, it is found that he was holding the rank of Naik at the time of discharge. However, he was enjoying the benefits of the post of Havildar under the Modified Assured Career Progression [MACP] Scheme at the time of discharge. His trade was Clerk [SD]. Thus, it is clear that the respondent no. 10 was holding the substantive post of Naik at the time of discharge. As per equivalence of ranks, provided in the Table in Appendix-Y to Circular no. 501, the post of Naik is below Havildar/Dafadar. The Assured Career Progression [ACP] Scheme/the Modified Assured Career Progression [MACP] Scheme have been notified to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The Scheme has envisaged that substantive promotion to the next higher cadre shall continue to duly earned, but to mitigate hardship in cases of acute stagnation in a cadre, an employee on completion of specific years of regular service, can be granted financial upgradation, if the employee fulfils all conditions of eligibility for promotion. The ACP/MACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits [through financial upgradation] only to the Government employee concerned on personal basis and such financial upgradation neither amounts to functional/regular promotion nor it creates any new post for the

purpose. Financial upgradation under the ACP/MACP Scheme is given to the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating new post for the purpose. Thus, for all intents and purposes, financial upgradation does not mean regular promotion to the next higher post. In such view of the matter, financial upgradation of the respondent no. 10 to enjoy the benefits enjoyed by an incumbent holding the post of Havildar substantively does not, by any means, amounts to his holding the rank of Havildar in regular manner. Consequently, it is found that the respondent no. 10 at the time of submission of his application for the post of UDA, for which he was selected and appointed by the impugned Notification dated 21.07.2022, was clearly ineligible. As such, his selection and appointment to the post of UDA made by the State respondents vide the impugned Notification dated 21.07.2022 is liable to be interfered with and accordingly, the same is set aside and quashed.

20. Eligibility or Ineligibility of the respondent no. 8 :- The application form of the respondent no. 8 along with annexures submitted therewith are perused. The petitioners have mounted the challenge to the selection of the respondent no. 8 on the premise that though the respondent no. 8 was serving as Naib Subedar under the Modified Assured Career Progression [MACP] Scheme at the time of his discharge, he was only a Store Keeper. The Advertisement dated 12.02.2020 mentioned that if one was JCO/Havildar Clerk at the time of his discharge, he would be eligible for the post of UDA [Directorate/District]. On perusal of the case papers annexed to the affidavit-in-opposition of the respondent nos. 4 to 14, more specifically, Page nos. 47 - 49, as well as from the original application form of the respondent no. 8 along with the Discharge Book annexed thereto, it is discernible that at the time of his discharge on 30.04.2019, the respondent no. 8 was enjoying the rank of Havildar and he was given the financial benefits of Naib Subedar under the MACP Scheme and his trade was Store Keeper Technical/Clerk. As per the Discharge Book, he also completed a Diploma in Warehousing [Weapon]. It has been certified by the Competent Authority that the respondent no. 8 was a Havildar [Clerk] and a Non-Commissioned Officer [NCO] till his retirement. As per Clause 48 of the Discharge Book, equation of his service educational qualification has been made with Graduate in civil educational qualification, as per the Government of India's letter dated 12.02.1986. As per the Gradation certificates annexed to the

application, the respondent no. 8 was serving as Havildar/Naib Subedar [MACP]. In view of such credentials of the respondent no. 8, his selection and appointment to the post UDA is not found to be unjustified.

21. Eligibility or Ineligibility of the respondent no. 5 :- The date of discharge of the respondent no. 5 was 31.07.2018. He served in the Indian Navy. As per his Service and Release Certificate appended to the affidavit-in-opposition of the respondent nos. 4 to 14, he was Petty Officer Aircraft Fitter. As per equivalence provided in the Table in Appendix-Y to the Circular no. 501, a Petty Officer in the Indian Navy is equivalent to the post of Havildar/Dafadar. In any view of the matter, it is not within the expertise of this Court to decide on the matter of equivalence of one post in one Division of the Armed Forces with another post in another Division of the Armed Forces and the same is to be best left to be examined and decided by the appointing authority. *Prima facie*, from Appendix-Y to Circular no. 501, it is discernible that a Petty Officer in the Indian Navy is equivalent to the rank of Havildar/Dafadar in the Indian Army. The issue raised by the petitioners is that just because the respondent is a Petty Officer, he cannot be equated with Havildar Clerk. Unless a specific case is made out that the decision of the Selection Board is contrary to the existing norms, a writ court while exercising the power of judicial review under Article 226 of the Constitution of India does not sit in appeal over the decision of a body consisting of experts or the appointing authority. In the case in hand, the appointing authority has found that the respondent no. 5 as Petty Officer in the Indian Navy having equivalent qualification to one of Havildar Clerk in the Indian Army, to be eligible and qualified to be selected and appointed to the post of UDA. Having regard to the ambit and scope of the power of judicial review under Article 226 of the Constitution of India and the obtaining fact situation, this Court in the absence of any clinching materials is not in a position to decide about ineligibility of the respondent no. 5 to be selected and appointed to the post of Head Assistant [District].

21.1. There is another issue, which has been contended strenuously on behalf of the petitioners. In Clause 6 of the Advertisement dated 12.02.2020, it was prescribed that simple application in plain paper with the details/documents was to be submitted by registered post, addressed to the Special Secretary to the

Government of Nagaland, Home Department, Police 'B' Branch so as to reach by 04-00 p.m. on 21.03.2020. It was specifically laid down therein that application by hand would not be accepted and enquiry regarding result of application would not be entertained. It was further made clear that canvassing in any form would disqualify for empanelment. The following documents were inter alia required to be submitted along with the application : [a] No, Rank, Name, Regiment, present and permanent address; [b] Dates of enrolment/commission and retirement with reason; [c] Photocopy of release/discharge certificate/book; [d] Other requisite information specified in the Notification; and [e] Bio Data and all relevant documents.

21.2. By the said Advertisement dated 12.02.2020, apart from the vacant posts involved in the case in hand, applications were also invited for two vacant posts of Deputy Director, Zilla Sainik Welfare Office. The writ petition, W.P.[C] no. 176/2022 [Maj. Vikuto Asumi (Retd.) vs. the Union of India and others] was preferred by the petitioner as an unsuccessful candidate challenging the selection and appointment of the party-respondent no. 4 and the party-respondent no. 5 therein, who were selected and appointed to the vacancies in the post of Deputy Director, Zilla Sainik Welfare Office. A specific allegation was made against the selection and appointment of the party-respondent no. 5 therein to the effect that the said candidate did not send his application by registered post so as to reach on or before 04-00 p.m. on 21.03.2020 but, had submitted his application only on 25.11.2021, followed by another application on 04.12.2021. In the absence of any addendum/corrigendum issued subsequent to the Advertisement dated 12.02.2020 extending the last date of submission of applications beyond 21.03.2020 as set forth originally in the Advertisement dated 12.02.2020, the learned Single Judge had interfered with the selection and appointment of the party-respondent no. 5 therein vide the Judgment and Order dated 27.02.2024. When the party-respondent no. 5 in W.P.[C] no. 176/2022 preferred an intra-court appeal, Writ Appeal no. 09/2024 [Maj. Merenwati Jamir (Retd.) vs. Maj. Vikuto Asumi (Retd.) and others], the Division Bench dismissed the writ appeal and affirmed the decision of the learned Single Judge, whereby the writ appellant's selection and appointment to the post of Deputy Director, Zilla Sainik Welfare Office, was interfered with on the ground that his application was not in terms of Clause 6 of

the Advertisement dated 12.02.2020 and the said application was not submitted by registered post.

21.3. Reverting back to the facts of the case in hand, it is the contention advanced on behalf of the petitioners that the applications submitted by the respondent no. 5 and the respondent no. 8 in response to the Advertisement dated 12.02.2020 were not in terms of Clause 6 of the Advertisement, that is, the applications were not submitted by registered post nor those were received on or before 21.03.2020.

21.4. On scrutiny of the original applications submitted by the respondent no. 5 and the respondent no. 8 in response to the Advertisement dated 12.02.2020, it is not discernible as to when the respondent no. 5 and the respondent no. 8 had submitted their applications. It is, thus, not clear as to whether the applications were submitted by registered post to reach the office of the Special Secretary to the Government of Nagaland, Police 'B' Branch on or before 04-00 p.m. on 21.03.2020 or those applications were submitted after 21.03.2020 by hand. To decide those issues, it would require factual determination. This Court in a writ petition, does not ordinarily embark on a fact-finding enquiry. Though the selection and appointment of the respondent no. 5 and the respondent no. 8 are not interfered with on the ground of ineligibility, for the reasons discussed hereinabove, but the aspect as to whether their applications were in violation of Clause 6 of the Advertisement dated 12.02.2020 is required to be determined on the basis of a fact finding enquiry. In such view of the matter, this Court deems it fit and proper to direct the appointing authority to decide, on the basis of the outcome of a fact-finding enquiry, as to whether the applications of the respondent no. 5 and the respondent no. 8 were submitted strictly in terms of Clause 6 of the Advertisement, that is, firstly, whether they had forward their applications by registered post and, secondly, whether their applications were reached the office of the Special Secretary to the Government of Nagaland, Home Department, Police 'B' Branch on or before 04-00 p.m. on 21.03.2020. If the answers on the above two issues are found to be in the affirmative, then only the appointing authority shall proceed further in the matter. If the answers on the said two issues are found not in the affirmative, then their selection and appointment are liable to be cancelled. It is

directed that such fact finding enquiry is to be completed within a period of 3 [three] months from the date of this order. The outcome of such fact finding enquiry is to be conveyed by a speaking order, a copy of which shall also be furnished to the petitioners forthwith. The interim order passed earlier in respect of the respondent no. 5 and the respondent no. 8 stands modified accordingly.

22. In the decisions referred to by Mr. Sheqi, learned counsel for the respondent nos. 4 to 14, the principle laid down is that once a person takes part in a process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection. If a candidate has appeared in a selection process knowing fully well about the process to be adopted, he cannot resile later on and take a somersault saying that the procedure as adopted by the authority is vitiated. If one appears for the selection process without protest and files a writ petition only after he realizes that he would not be selected at the end of the selection process, no relief can be granted in such a writ petition. It is settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted. In *Ranjan Kumar* [supra], it has been held that if the selected candidates are not impleaded as parties in a writ petition instituted by candidates who are unsuccessful in the selection process, no relief can be granted to the writ petitioners as in the absence of the selected and appointed candidates and without affording an opportunity of hearing to them, the selection cannot be set aside. In the present writ petition, all the candidates, whose selection and appointment are challenged, are impleaded as party-respondents and they contested the writ petition by filing counter affidavit. In none of the decisions referred to by Mr. Sheqi, the ineligibility of the selected candidates to be appointed for was of issue. The petitioners therein had found themselves not successful in the selection process as their positions were either below the selected candidates whose selection they had challenged, or the petitioners were not selected and it is in such factual scenario, the principles referred to hereinabove are clearly applicable.

23. In the case in hand, the petitioners have contended that many of the respondents were ineligible in terms of the Advertisement dated 12.02.2020 itself and their candidatures ought not to have been accepted, not to speak of allowing them to participate in the selection process. The petitioners' eligibility to participate in the selection process are found to be in order. The petitioners have contended that the respondent nos. 4 to 14 were ineligible to participate in the selection process and the State respondents by making departure from the terms and conditions set forth in the Advertisement dated 12.02.2020, had selected and appointed them illegally. As such departure from the terms and conditions set forth in the Advertisement can only be termed as illegality and is found to be in violation of the principles laid down in Article 14 and Article 16 of the Constitution of India the present writ petition instituted by the petitioners challenging the selection and appointment of the respondent nos. 4 to 14 on grounds of challenge, already adverted to hereinabove, is found to be maintainable.

24. In so far as the relief sought for by the petitioners by the second prayer is concerned, the Advertisement dated 12.02.2020 has not mentioned about maintaining of any waiting list. It is not known whether there was any cut-off mark or benchmark set by the Selection Board in respect of the posts the petitioners had applied for. In the absence of sufficient materials, it is not possible for the Court to hold that the selection process should be carried forward from the stage after setting aside and quashing of the selection and appointment of the afore-mentioned respondents to examine the cases of the petitioners for the appointments in the vacant posts.

25. Summing up, in view of the afore-mentioned fact situation obtaining in the case in hand and for the reasons assigned hereinabove, the writ petition is partly allowed to the following extent :-

[i] The selection and appointment of the respondent no. 12 and the respondent no. 13 for the two posts of Welfare Officer made vide the Notification dated 21.07.2022 are not interfered with as none of the five writ petitioners had applied for the two posts of Welfare Officers in response to the Advertisement dated 12.02.2020.

[ii] The selection and appointment of the respondent nos. 4, 6, 7, 9, 10, 11 & 14, as declared by the Notification dated 21.07.2022, are found not sustainable in law as they are ineligible for being applied in those posts; and their selection and appointment are set aside and quashed. The interim order made in respect of the respondent nos. 4, 6, 7, 9, 10, 11 & 14 stands merged with this order.

[iii] In so far as the legality and validity of the selection and appointment of the respondent no. 5 and the respondent no. 8 for the post of Head Assistant [District] and UDA respectively are concerned, the same would be dependent on the outcome of the fact finding enquiry in the manner directed in the preceding paragraphs. As the selection and appointment of the respondent no. 5 and the respondent no. 8 are dependent on the outcome of such fact finding enquiry, the interim order passed earlier in respect of the respondent no. 5 and the respondent no. 8 stands accordingly modified.

[iv] The State respondents are at liberty to fill up the vacant posts, arising due to interference in the afore-stated manner, by undertaking a regular recruitment process.

**Sd/-
JUDGE**

Comparing Assistant