



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

Writ Appeal no. 34/2022

1. Shri. Neilhoulie Seyie, Senior Inspector of Supply, Department of Food and Civil Supplies, Government of Nagaland, currently posted under the office of the Assistant Director of Supply (ADS), Dimapur, Nagaland.
2. Smti. Vihinu John, Senior Inspector of Supply, Department of Food and Civil Supplies, Government of Nagaland, currently posted under the office of the Assistant Director of Supply (ADS), Kohima.

.....Appellants

-VERSUS-

1. The State of Nagaland, represented by the Commissioner and Secretary, Department of Food and Civil Supplies, Government of Nagaland, Kohima.
2. The Director, Directorate of Food and Civil Supplies, Government of Nagaland, Dimapur.
3. Shri. Moanungsang, Senior Inspector of Supply Department of Food and Civil Supplies, Government of Nagaland currently

posted under the office of the Inspector of Supply, Tseminyu, Nagaland.

4. Allen Imchen, Senior Inspector of Supply Department of Food and Civil Supplies, Government of Nagaland currently posted under the office of the Assistant Director of Supply Mokokchung, Nagaland.

.....**Respondents**

Advocates :

Appellants : Mr. R. Iralu, Senior Advocate
Mr. L. Iralu, Advocate
Respondent nos. 1 & 2 : Mr. Moa Imchen, Senior Government Advocate
Respondent nos. 3 & 4 : Mr. C.T. Jamir, Senior Advocate
Mr. I. Imchen, Advocate
Date of Hearing : 23.09.2024
Date of Judgment & Order : 04.10.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER

[Manish Choudhury, J.]

This intra - court appeal is presented against a Judgment and Order dated 21.10.2022 passed by a learned Single Judge in a writ petition, W.P.[C] no. 124/2019. It may be mentioned that by the Judgment and Order dated 21.10.2022, the learned Single Judge has disposed of two writ petitions, W.P.[C] no. 62/2019 and W.P.[C] no.

124/2019, by dismissing both of them. The writ petition, W.P.[C] no. 62/2019 was preferred by two writ petitioners viz. [i] Moanungsang; and [ii] Allen Imchen wherein the present appellant no. 1, Neilhoulie Seyie was impleaded as party-respondent no. 9. On the other hand, the writ petition, W.P.[C] no. 124/2019 was preferred by the present two appellants as the writ petitioners viz. [i] Neilhoulie Seyie [A-1]; and [ii] Vihinu John [A-2] wherein the two writ petitioners in the writ petition, W.P.[C] no. 62/2019 were impleaded as party-respondent no. 3 and party-respondent no. 4 respectively and they are also impleaded in this intra - court appeal as party-respondent no. 3 [R-3] and party-respondent no. 4 [R-4] respectively.

2. Being aggrieved and dissatisfied with the dismissal of their writ petition, W.P.[C] no. 124/2019 where the present two appellants were the writ petitioners, the instant intra - court appeal has been preferred challenging that part of the common Judgment and Order dated 21.10.2022. It has been submitted at the Bar that no intra - court appeal has been preferred against the dismissal of the writ petition, W.P.[C] no. 62/2019 wherein the respondent no. 3 and the respondent no. 4 in the instant intra - court appeal, were the writ petitioners.

3. The subject-matters of both the writ petitions, W.P.[C] no. 62/2019 and W.P.[C] no. 124/2019 were, in essence, with regard to inter se seniority of the contesting parties in the post/cadre of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland. The contestation arose among the contesting parties when by a Government Letter no. SPLY-10/03/2013 dated 19.11.2018, a tentative seniority list of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland was published. The genesis of the dispute is another seniority list of Inspector of Supply published by the Department of Food and Civil Supplies, Government of Nagaland indicating the inter se seniority positions of incumbents holding the post of Inspector of Supply, as on 31.03.2016. In between publication of the afore-mentioned two seniority lists, another revised seniority list was circulated for the Inspector of Supply, as on 15.03.2017, reference of which would be made in the later part of this order.

4. In order to understand and appreciate the exact nature of the inter se seniority dispute involved, it appears apt, at the inception, to refer to both the seniority list of Inspector of Supply, as on 31.03.2016 [hereinafter also referred to as 'First List of Seniority', at places, for easy reference] and the seniority list of Inspector of Supply, as on 19.11.2018 [hereinafter also referred to as 'Second List of Seniority', at places, for easy reference], published by the Department of Food and Civil Supplies, Government of Nagaland.

4.1. The First List of Seniority, that is, the seniority list of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland, as on 31.03.2016, was as follows :-

SENIORITY LIST OF INSPECTORS OF SUPPLY IN THE F & C.S. DEPARTMENT AS ON 31.03.2016				
Sl.	Name of the Official	Date of First entry into Service	Date of Promotion	Direct or Promotee
1	Ekoni Humtsoe	20.12.2006		Direct recruit
2	Kavito Aomi	06.06.2001	02.07.2007	Promotee
3	John K.R. Zeliang	18.01.2002	05.12.2007	Promotee
4	N. Wangnei Konyak	06.06.2001	13.05.2010	Promotee
5	Ali Konyak	21.03.2002	13.05.2010	Promotee
6	Sentitemsu Longkumer	16.04.2002	30.08.2010	Promotee
7	Metsisietuo Zhasa	11.02.2004	30.08.2010	Promotee
8	Grace Metha	05.08.2004	29.02.2012	Promotee
9	Neilhoulie Seyie [A-1]	07.09.2005	29.02.2012	Promotee
10	Vihinu John [A-2]	16.06.2006	29.02.2012	Promotee
11	Ntsemo Lotha	01.08.1985	29.02.2012	Promotee
12	Moanungsang [R-3]	19.07.2012		Direct recruit
13	Allen Imchen [R-4]	19.07.2012		Direct recruit
14	Imlitemsu	03.11.1991	26.03.2013	Promotee
15	Y. Renthungo	05.08.2006	22.05.2014	Promotee

16	Sashilemla	06.09.2006	17.03.2016	Promotee
----	------------	------------	------------	----------

4.2. The Second List of Seniority, that is, the tentative seniority list of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland, as on 19.11.2018, was as follows :-

TENTATIVE SENIORITY LIST OF INSPECTORS OF SUPPLY IN THE F & C.S. DEPARTMENT AS ON 19.11.2018				
Sl.	Name of the Official	Date of First entry into Service	Date of Promotion	Direct or Promotee
1	Kavito Aomi	06.06.2001	02.07.2007	Promotee
2	John K.R. Zeliang	18.01.2002	05.12.2007	Promotee
3	N. Wangnei Konyak	06.01.2001	13.05.2010	Promotee
4	Ali Konyak	21.03.2002	13.05.2010	Promotee
5	Sentitemsu Longkumer	16.04.2002	30.08.2010	Promotee
6	Metsisietuo Zhasa	11.02.2004	30.08.2010	Promotee
7	Grace Metha	05.08.2004	29.02.2012	Promotee
8	Moanungsang [R-3]	07.09.2005	29.02.2012	Direct [NPSC Merit]
9	Neilhoulie Seyie [A-1]	16.06.2006	29.02.2012	Promotee
10	Allen Imchen [R-4]	01.08.1985	29.02.2012	Direct [NPSC Merit]
11	Vihinu John [A-2]	19.07.2012	19.07.2012	Promotee
12	Ntsemo Lotha	19.07.2012	19.07.2012	Promotee
13	Imlitemsu	03.11.1991	26.03.2013	Promotee
14	Y. Renthungo	05.08.2006	22.05.2014	Promotee
15	Sashilemla	06.09.2006	17.03.2016	Promotee

4.3. It is pertinent to mention that in the writ petition, W.P.[C] no. 62/2019, the

Inspector of Supply named [i] Ali Konyak; [ii] Sentitemsu Longkumer; [iii] Metsiseituo Zhasa; and [iv] Grace Metha; were impleaded as party-respondent no. 5, party-respondent no. 6, party-respondent no. 7 and party-respondent no. 8 respectively.

4.4. When the said two seniority list are looked at together, it can be seen that in both the seniority lists, [i] Ali Konyak; [ii] Sentitemsu Longkumer; and [iii] Metsiseituo Zhasa; figured above the present two appellants; the present respondent no. 3; the present respondent no. 4, and Grace Metha, for the reason that they were promoted to the cadre of Inspector of Supply in the year 2010 and there cannot be any qualms that those three were senior to the others, as the others were promoted/recruited to the post/cadre of Inspector of Supply subsequently in the year 2012. With no challenge being made by the two writ petitioners, that is, the present respondent no. 3 [R-3] and the present respondent no. 4 [R-4], against the dismissal of their writ petition, W.P.[C] no. 62/2019, it can be accepted that the present respondent no. 3 [R-3] and the present respondent no. 4 [R-4] have accepted their seniority positions vis-à-vis the seniority positions of [i] Ali Konyak; [ii] Sentitemsu Longkumer; and [iii] Metsiseituo Zhasa; who are above them.

4.5. When the two seniority lists are again compared, it can be noticed that the inter se seniority positions among Grace Metha, the present two appellants and Ntsemo Lotha on one hand; and the present respondent no. 3 and the present respondent no. 4 on the other hand; have been changed in the following manner, as is evident from the two following abridged versions of the First List of Seniority and the Second List of Seniority, referred above, :-

SENIORITY LIST OF INSPECTORS OF SUPPLY IN THE F & C.S. DEPARTMENT AS ON 31.03.2016 [ABRIDGED VERSION]				
Sl.	Name of the Official	Date of First entry into Service	Date of Promotion	Direct or Promotee
8	Grace Metha	05.08.2004	29.02.2012	Promotee
9	Neilhoulie Seyie [A-1]	07.09.2005	29.02.2012	Promotee

10	Vihinu John [A-2]	16.06.2006	29.02.2012	Promotee
11	Ntsemo Lotha	01.08.1985	29.02.2012	Promotee
12	Moanungsang [R-3]	19.07.2012		Direct
13	Allen Imchen [R-4]	19.07.2012		Direct

TENTATIVE SENIORITY LIST OF INSPECTORS OF SUPPLY IN THE F & C.S. DEPARTMENT AS ON 19.11.2018 [ABRIDGED VERSION]				
Sl	Name of the Official	Date of First entry into Service	Date of Promotion	Direct or Promotee
7	Grace Metha	05.08.2004	29.02.2012	Promotee
8	Moanungsang [R-3]	07.09.2005	29.02.2012	Direct [NPSC Merit]
9	Neilhoulie Seyie [A-1]	16.06.2006	29.02.2012	Promotee
10	Allen Imchen [R-4]	01.08.1985	29.02.2012	Direct [NPSC Merit]
11	Vihinu John [A-2]	19.07.2012	19.07.2012	Promotee
12	Ntsemo Lotha	19.07.2012	19.07.2012	Promotee

5. As the present two appellants, A-1 and A-2 have still nursed the grievance as regards changes made in their inter se seniority positions vis-à-vis the present respondent no. 3 [R-3] and the present respondent no. 4 [R-4], even after dismissal of their writ petition, W.P.[C] no. 124/2019, they have carried the matter by this intra - court appeal.

6. We have heard Mr. R. Iralu, learned senior counsel assisted by Mr. L. Iralu, learned counsel for the appellants; Mr. Moa Imchen, learned Senior Government Advocate, Nagaland for the State respondent nos. 1 & 2; and Mr. C.T. Jamir, learned senior counsel assisted by Mr. I. Imchen, learned counsel for the respondent nos. 3 & 4.

7. Mr. Iralu, learned senior counsel appearing for the appellants has submitted that the basic dispute is inter se seniority of the two promotees, that is, the appellant no. 1 and the appellant no. 2 [hereinafter also referred to as 'the appellants' together, at places, for brevity] on one hand and the two direct recruits, that is, the respondent no. 3 [R-3] and the respondent 4 [R-4] on the other hand [hereinafter also referred to as 'the private respondents' together, at places, for brevity], as all of them came to be promoted/recruited in the post/cadre of Inspector of Supply in the same year, 2012. He has submitted that the relevant Service Rules, that is, the Nagaland Food and Civil Supplies Service Rules, 1977, as amended up-to-date [hereinafter referred to as 'the Service Rules', for short], have provided for fixation of inter se seniority on the basis of principle of quota - rota rule of seniority. He has pointed out that such principle of quota - rota rule of seniority had never been followed by the State respondents in the feeder post of Inspector of Supply, held earlier by the appellants, at any earlier point of time. It was only for the first time vide the impugned Second List of Seniority dated 19.11.2018, the rotation rule of seniority was effectuated only after the appellants and the private respondents, along with others were promoted to a newly upgraded post and grade of Senior Inspector of Supply, which was devoid of quota in the relevant Service Rules. Elaborating further, Mr. Iralu has submitted that the case of the appellants is two-fold, *firstly*, that the quota - rota seniority had never been implemented ever since the amended Service Rules came into force in 2002 and therefore, the same cannot be implemented for the first time only in respect of the appellants and the private respondents, to the exclusion of all other members in the Service; and *secondly*, the quota - rota rule of seniority cannot be applied to the post and grade of Senior Inspector of Supply where there is no quota prescribed for that particular post in the Service Rules. Learned senior counsel has contended that such discriminatory application of quota - rota rule of seniority has violated the rights of the appellants guaranteed under Article 14 and Article 16 of the Constitution of India. It has been pointed out that the quota - rota rule of seniority is incorporated in Rule 15[ii] of the Nagaland Civil Supplies [1st Amendment] Rules, 2002.

7.1. Mr. Iralu has submitted that the appellants were promoted to the post of Inspector of Supply on 29.02.2012 whereas the private respondents were directly recruited as Inspector of Supply on 18.07.2012 and the private respondents had joined the Service on 19.07.2012. Publication of a list of seniority of Inspector of Supplies under the Service Rules was made earlier on 01.11.2007 and in the said seniority list, seniority was adjudged on the basis of continuous length of service ignoring Rule 15 [ii] of the Service Rules. Similar practice was followed in the subsequent seniority lists of Inspector of Supply, published on 23.03.2010 and 01.06.2012 respectively. When the First List of Seniority of Inspector of Supply was published on 31.03.2016 the quota - rota rule of 50 : 50 was not followed and seniority was again fixed on the basis of continuous length of service and therein, the two private respondents were placed below the two appellants.

7.2. Mr. Iralu has submitted that the inter se seniority dissension was raised for the first time by the respondent no. 4 in a Representation he submitted on 26.10.2016 wherein he sought re-fixation of his seniority on the basis of date of occurrence of vacancy wherein he was directly recruited. Another seniority list, indicating inter se seniority positions as on 15.03.2017, was published wherein the earlier seniority positions, on the basis of continuous length of service, were maintained. Subsequently, the dispute continued and finally on 19.11.2018, the impugned tentative seniority list of Inspector of Supply, as on 19.11.2018, that is, the Second List of Seniority was published by following the quota - rota rule of seniority embodied in Rule 15 [ii] of the Service Rules, thereby, arbitrarily unsettling the settled positions of inter se seniority. Mr. Iralu has reiterated that ever since the Service Rules was brought into force in 2002, seniority has been fixed only on the basis of continuous length of service and in the process, Rule 15 [ii] has become otiose as it had never been used. It has been contended that a departure has been made in the impugned Second List of Seniority, as on 19.11.2018, by unreasonably implementing Rule 15 [ii] after long 16 years only in respect of the two appellants and the two private respondents and to no other members of the Service. Such limited application has rendered the action highly discriminatory, arbitrary and illegal, Mr. Iralu has contended. Since the quota rule had

never been strictly implemented by the State respondents the rota rule of seniority cannot be enforced at such belated stage to the prejudice to the two appellants only.

7.3. Mr. Iralu has further contended that the Second List of Seniority, as on 19.11.2018, was published when neither the two appellants nor the two private respondents were serving in the post of Inspector of Supply. He has stated that on 25.04.2017, the Cabinet had inter alia approved upgradation of 12 nos. of posts of Inspector of Supply to that of Senior Inspector of Supply and pursuant thereto, a number of incumbents serving in the post of Inspector of Supply including the two appellants and the two private respondents, were appointed in the upgraded posts of Senior Inspector of Supply. Thus, the publication of the Second List of Seniority of Inspector of Supply, as on 19.11.2018, was a belated one and cannot be acted upon.

7.4. In support of his submissions, Mr. Iralu, learned senior counsel has referred to a decision of the Hon'ble Supreme Court of India in **G.S. Lamba and others vs. Union of India and others**, reported in [1985] 2 SCC 604.

8. Both Mr. Imchen, learned Senior Government Advocate appearing for the State respondent nos. 1 & 2; and Mr. Jamir, learned senior counsel appearing for the two private respondent nos. 3 & 4; have submitted in similar lines opposing the contentions advanced on behalf of the two appellants. It has been submitted that the two private respondents became members of the Service in the year 2012 when they as direct recruits were appointed to the post of Inspector of Supply, after being recommended for appointment, pursuant to the completion of a competitive selection process undertaken for recruitment to the Service. It has been contended that being direct recruits, the two private respondents had the right to represent that their seniority positions as members of the Service should be fixed and maintained by the provision contained in Rule 15 [ii] of the Service Rules. When in the First List of Seniority of Inspector of Supply published in the years 2016 and also in the list of seniority published in the year 2017, their inter se seniority positions were found to have been not fixed in terms of Rule 15 [ii], it was represented before the competent

authority highlighting the irregularities followed in fixation of seniority merely on the length of continuous service.

8.1. It has been contended on behalf of the State respondents and the private respondents that acting on such representation as regards inter se seniority, the State respondents had realized the fact that the practice followed during the previous years was not proper and feasible to be repeated in respect of the contesting parties herein and had accordingly, adopted corrective measures by publishing the Second List of Seniority of Inspector of Supply, as on 19.11.2018, by strictly adhering to Rule 15 [ii]. As the correct implementation of the quota - rota rule of seniority had affected only the two appellants and the two private respondents and none other in the Service, the other members in the Service cannot have any cause to be aggrieved. In so far as the two appellants are concerned, their inter se seniority positions have been correctly fixed by strictly following Rule 15 [ii] as the two appellants were promoted and the two private respondents were directly recruited in the post/cadre of Inspector of Supply in the same year, 2012. That the quota - rota rule of seniority embodied in Rule 15 [ii] has been correctly implemented is evident from the fact that Grace Metha, another Inspector of Supply who was promoted on the same date, 29.02.2012 as like the two appellants, has been positioned above the respondent no. 3.

8.2. It has been pointed out by the learned counsel for the respondents that by a Notification dated 24.07.2017, 12 nos. of Inspector of Supply including the two appellants and the two private respondents, were promoted to the upgraded post of Senior Inspector of Supply. It has also been pointed out that such promotions were made only in the upgraded posts and for effecting such promotions, new posts were not created. It has been contended that the said fact is evident from the Office Memorandum dated 26.04.2017 as well as from the Notification dated 24.07.2017. Since during the process of upgradation of post the inter se seniority dispute between the contesting parties herein were under consideration of the State Government, it cannot be said that the fixation of inter se seniority in terms of the quota - rota rule of seniority by the Second List of Seniority is a belated one.

8.3. Learned counsel appearing for the respondents have contended that the decision in **G.S. Lamba** [supra] is not at all applicable to the case in hand as the fact situation obtaining therein are not similar to the fact situation obtaining in the case in hand. In **G.S. Lamba** [supra], it has been found that if the quota - rota rule of seniority would be permitted to be applied then the later direct recruits of some unknown future date/year would score a march over the promotee incumbents, who were promoted many years earlier. It has been contended that the intra - court appeal lacks merit and, therefore, deserves to be dismissed.

9. We have given due consideration to the submissions advanced by the learned counsel for the parties including the written arguments submitted on behalf of the appellants and have also gone through the materials brought on record by the parties through their pleadings. We have also perused the amended Service Rules governing the matters of recruitment and conditions of service of the members of the Nagaland Civil Supplies Service, of which the two appellants and the two private respondents are members.

10. At the inception and before making any deliberation on the dispute of inter se seniority, it is appropriate to trace out the manners in which the two appellants and the two private respondents came to be promoted and/or appointed to the post of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland.

10.1 The appellant no. 1 came to be appointed as a Sub-Inspector of Supply by an Order dated 07.09.2005 passed by the Director, Food and Civil Supply, Nagaland. From the Order dated 07.09.2005, it is noticed that the appointment was made on the recommendation of an Interview Board. The appellant no. 2 came to be appointed as a Sub-Inspector of Supply by an Order dated 14.06.2006 passed by the Director, Food and Civil Supply, Nagaland. From the two Orders, dated 09.09.2005 and dated 14.06.2006, it is noticed that the appointments of the appellant no. 1 and the

appellant no. 2 had administrative approval of the Government. It transpires that a meeting of the Departmental Promotion Committee [DPC] was held on 04.02.2012 and on recommendation of the DPC, four Sub-Inspector of Supply viz. [i] Grace Metha; [ii] Neilhoulie Seyie i.e. the appellant no. 1; [iii] Vihinu John i.e. the appellant no. 2; and [iv] Ntsemo Lotha; were promoted to the post of Inspector of Supply by an Order dated 29.02.2012 of the Director, Food and Civil Supplies, Nagaland with effect from the date of their joining in the post against the vacancies. The Order dated 29.02.2012 further mentioned that the other conditions of service which were not specified in the Order, shall be governed by the relevant rules and orders in force from time to time.

10.2. By two Orders bearing Memo no. BSE/1/88-89/762 and Memo no. BSE/1/88-89/761, both dated 18.07.2012, passed under the hand of the Director, Food and Civil Supplies, Nagaland, the respondent no. 3 and the respondent no. 4 [‘the private respondents’] were appointed to the post and cadre of Inspector of Supply in the Department of Food and Civil Supplies, Nagaland on probation for a period of two years with effect from the date of their joining in the post. In the two Orders dated 18.07.2012, it was recorded that the appointments were made on the recommendation of the Nagaland Public Service Commission [NPSC] dated 06.07.2012. Both the Orders dated 18.07.2012 also mentioned that the other conditions of service which were not specified therein, shall be governed by the relevant rules and orders in force from time to time.

11. The posts of Sub-Inspector of Supply and Inspector of Supply are part of the Nagaland Civil Supplies Subordinate Service [Class-III]. The matters of recruitment and conditions of service of persons appointed to the Nagaland Civil Supplies Service [Class-II] and the Nagaland Civil Supplies Subordinate Service [Class-III] are regulated and governed by the Nagaland Food and Civil Supplies Service Rules, 1977 [‘the Service Rules’], which were framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. A number of amendments to the Nagaland Food and Civil Supplies Service Rules, 1977 came to be carried out by the Nagaland Food and Civil Supplies Service [1st Amendment] Rules, 2002 [‘the Service Rules, as

amended'], notified vide a Notification dated 06.10.2002. By a Memorandum dated 21.04.2023, the Secretary to the Government of Nagaland, Department of Food and Civil Supplies, the amended Service Rules were forwarded for publication in the Official Gazette and it has been submitted at the Bar that thereafter the amended Service Rules were published in the Official Gazette.

12. As per Rule 2[ix], 'Service' means the Nagaland Civil Supplies Service [Class-II] and the Nagaland Civil Supplies Subordinate Service [Class-III]. Rule 3 of the Service Rules, as amended, has provided for constitution and classification of the Service and according to Rule 3, the Service shall consist of three classes of post : [A] Class-I Gazetted; [B] Class-II Gazetted; and [C] Class-III. The posts in the Service are categorized in different categories. In the case in hand, we are, at first, concerned with the posts of Inspector of Supply and Sub-Inspector of Supply, which come within the purview of the Nagaland Civil Supplies Subordinate Service [Class-III]. As per the Service Rules, as amended, Inspector of Supply is a Category – III post whereas the Sub-Inspector of Supply is Category – IV post. Rule 3 has further provided that the Governor from time to time may reduce or add category of post or posts.

12.1. Rule 5 of the Service Rules, as amended, has provided for the method of recruitment. As per sub-rule [1] of Rule 5, recruitment to the Service, after commencement of the Rules, shall be by two methods, namely, [a] by direct recruitment by competitive examination/selection; and [b] by promotion from lower grade. Sub-rule [2] of Rule 5 has prescribed to the effect that the quota allotted to each source or recruitment under [a] and [b] of sub-rule [1] and the minimum educational standards and conditions for recruitment shall be as mentioned in Schedule 2 [ii]. Sub-rule [4] of Rule 5 has provided that if the sufficient number of candidates for the posts pertaining to any source of recruitment provided in sub-rule [1] thereto is not available in the course of recruitment in a calendar year, the quota pertaining to that source shall lapse.

12.2. Rule 6 of the Service Rules, as amended, has inter alia provided that all

appointments to the Service after commencement of the Rules, shall be made by the respective Appointing Authority and no such appointment shall be made except after selection by one of the methods of recruitment specified in Rule 5. Rule 6A of the Service Rules, as amended, has provided for direct recruitment by competitive examination and Rule 7 has laid down the conditions of eligibility for direct recruitment. Rule 11 has laid down the manner of selection for promotion to non-gazetted post in the Service, which includes the posts of Sub-Inspector of Supply and Inspector of Supply. Rule 11 [1] has mentioned that promotion to the non-gazetted post in the Service shall be considered on the basis of merit-cum-seniority by a Departmental Promotion Committee [DPC] and the composition of the DPC is also mentioned therein. As per Rule 11 [2], the DPC after examining the records of service and other relevant documents, is required to prepare a list of candidates eligible/suitable in order of preference and to forward the same to the Director. Rule 12 [1] has inter alia provided that appointment of the officers, included in the select list, to posts borne on the cadre of the Service shall follow the order in which the names of such officers appear in the select list.

12.3. Rule 15 of the Service Rules, as amended, has provided for seniority. As in the case in hand it is Rule 15, which is of import and relevance, Rule 15 of the Service Rules, as amended, is quoted herein in its entirety :-

15. SENIORITY.

[i] The seniority of the member of the service recruited directly by competitive examination under rule in a particular cadre shall be in order in which their names are arranged in the select list, if the members join their posts within 30 days from the date of issue of the order of the appointment. Thereafter, their seniority shall be determined in accordance with the date of joining irrespective of merit list.

[ii] The relative seniority of direct recruits and promotees recruited and promoted respectively in the same year shall be determined accordingly to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in Schedule-II, the promotee ranking senior to the direct recruits.

12.4. It also appears relevant to reproduce the relevant parts of Schedule-II [1].

SCHEDULE-II[1]

Sl. No.	Category of post	Percentage of Post to be filled up by		Qualification	Eligibility and other conditions for promotion
		Direct recruitment	Departmental Promotion		
1.	CATEGORY-III Inspectors of Supply	50%	50%	Graduate in Arts/Science/Commerce/Agri./Engg./Physical/Education/Home Sc./Vety.Sc./Diversity/Geology/Applied Geology/Applied Geophysics or its equivalent.	Must be substantive of immediate lower category of post with 5 [five] years of continuous service in that category.

13. The Directorate of Food and Civil Supplies, Nagaland published two seniority lists of incumbents in the cadre of Inspector of Supply in the Department, as on 01.11.2007, and as on 23.03.2010, respectively. The appellants might perhaps be right

in contending that in those seniority lists, fixation of inter se seniority of the incumbents was made on the basis of continuous length of service of the incumbents. Another seniority list of incumbents holding posts in the cadre of Inspector of Supply in the Department, as on 01.06.2012, was published under the hand of the Director, Food and Civil Supplies, Nagaland and in the said seniority list, the names of [i] Ali Konyak; [ii] Sentitemsu Longkumer; [iii] Metsiseituo Zhasa; and [iv] Grace Metha; had figured along with the two appellants; as they were promoted on 29.02.2012, and in the list, the two private respondents did not figure as till that time, the two private respondents were not appointed. Another seniority list of Inspector of Supply in the Department, as on 20.07.2012, was issued under the hand of the Director, Food and Civil Supplies, Nagaland wherein the names of the two private respondents herein figured below the four promotee Inspector of Supply, who were promoted on 29.02.2012 and the contestation between the two sides started from those points of time. Similarly, in the seniority list of Inspector of Supply in the Department ['First List of Seniority'], as on 31.03.2016, the same situation continued.

14. The respondent no. 4 herein submitted a Representation before the Director, Food and Civil Supplies, Nagaland on 26.10.2016 raising the grievance that the inter se seniority between the promotee Inspector of Supply and the direct recruits Inspector of Supply were required to be fixed by following the provisions for rotation of quota as per Rule 15 [ii] of the Service Rules, as amended. The official respondents seemed to have acted on the said Representation as the Director, Food and Civil Supplies, Nagaland vide an Office Memorandum dated 25.04.2017 published a revised tentative seniority list of Inspector of Supply following Rule 15 [ii] of the Service Rules, as amended, by re-fixing the inter se seniority among the Inspector of Supply and also invited objections on or before 15.05.2017. The positions of the contesting parties herein and other relevant incumbents appeared in the said tentative seniority list in the following manner :-

TENTATIVE SENIORITY LIST OF INSPECTORS OF SUPPLY IN THE DEPARTMENT AS ON 20.04.2017
--

Sl.	Name of the Official	Date of First entry into service	Date of Promotion	Direct or Promotee
6	Moanungsang	19.07.2012	19.07.2012	Direct [NPSC Merit]
7	Metsisietuo Zhasa	11.02.2004	30.08.2010	Promotee
8	Allen Imchen	19.07.2012	19.07.2012	Direct [NPSC Merit]
9	Grace Metha	05.08.2004	29.02.2012	Promotee
10	Neilhoulie Seyie	07.09.2005	29.02.2012	Promotee
11	Vihinu John	16.06.2006	29.02.2012	Promotee

15. On publication of the tentative seniority list of Inspector of Supply, as on 20.04.2017, by the Office Memorandum dated 25.04.2017, the appellant no. 1 herein submitted an Objection to the said revised tentative seniority list on 10.05.2017 before the Director, Food and Civil Supplies, Nagaland. It was contended in the Objection that the inter se seniority in the revised tentative seniority list issued on 25.04.2017, was fixed for the direct recruits illegally on the basis of the requisition date whereby requisition was made for filling up the vacancies. By the Objection, it was requested to re-evaluate the seniority list of the Inspector of Supply by maintaining seniority as per the date of promotion and the date of recruitment on the basis of selection by the NPSC. The appellant no. 2 herein also submitted an Objection on 10.05.2017 raising similar contentions.

16. The matter of inter se seniority reached the Personnel & Administrative Reforms Department in the State Government and the Personnel & Administrative Reforms Department re-examined the matter in consultation with the Justice and Law Department. In its U.O. no. 700 dated 30.10.2018, the Personnel & Administrative Reforms Department in consultation with the Justice and Law Department had observed as under :-

“Service Rules are statutory provisions enacted under Article 309 for governing the service conditions of the Deptt. of Food & Supply.

The law under Rule 15 [ii] of the Rules provide that the inter se seniority of promotees and direct recruited in the same year shall be that the promotees shall rank senior to the direct recruits. The provisions of the Rules are very clear and the Deptt. is to make the inter se seniority list according to the provision of Rule 15 [ii].

With reference to the notification issued by DoPT, it may be observed that it is an executive order issuing direction. The Nagaland Civil Supplies Service Rules, 2002 is a statutory Rules framed for regulating the service conditions of the members of the Deptt. of Food & Civil Supplies.

It is an established and accepted position of law that statutory provisions such as Service Rules have pre-eminence over executive orders. In other words, such orders and notification cannot overrule the provisions of statutory law. To allow notification and executive orders to overrule statutory provisions is illegal and bad in law and is liable to be struck down. If the provisions of Service Rules suffer from legal infirmity as to have provisions that violate constitutional rights guaranteed under the law than the same is also liable to be struck down. This is not the case in the present context.

If the Deptt. of Food & Supplies is of the opinion that the notification of DoPT should be made applicable, then the Nagaland Civil Supplies Rules, 2002 has to be amended to incorporate the same into the Rules.

Only in the absence of Service Rules for addressing the issue of fixing inter se seniority the direction, principles issued by DoPT can be followed.

However, till such amendment is made the present provisions of Rule 15 [ii] of the Nagaland Civil Supplies rules, 2002 governs the subject of fixing inter se seniority for the members of the cadre of the Directorate of Food and Civil Supplies.”

17. After the U.O. no. 700 dated 30.10.2018, the Department of Food and Civil Supplies, Government of Nagaland vide its Letter no. SPLY-10/3/2013 dated 16.11.2018 directed the Director, Food and Civil Supplies, Nagaland to prepare the tentative seniority list in the level of Inspector of Supply [by then upgraded to Senior Inspector of Supply] in compliance with the observations of the Personnel and Administrative Reforms Department and to submit it to the Government at the earliest for further necessary action.

18. It was pursuant to the said Government Letter no. SPLY-10/3/2013 dated 16.11.2018, the tentative seniority list of Inspector of Supply [the Second List of Seniority] in the Department of Food and Civil Supplies, as on 19.11.2018, came to be issued and the said seniority list was circulated vide a Letter of the Directorate of Food and Civil Supplies, Nagaland dated 03.12.2018. The two appellants thereafter, submitted Representations separately before the Director, Food and Civil Supplies, Nagaland on 15.12.2018 raising their grievances. When no action on their such Representations seemed to have taken by the official respondents, the two appellants as the writ petitioners preferred the writ petition, W.P.[C] no. 124/2019 seeking, *firstly*, setting aside of the tentative seniority list of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland, as on 19.11.2018, and the Letter dated 03.12.2018; *secondly*, a direction to the State respondents to prepare the seniority list of Senior Inspector of Supply in the Department in accordance with the principle of continuous length of service by counting seniority from the date of appointment / promotion; and *thirdly*, a further direction to the State Government to consider amending Rule 15 [ii] of the Service Rules, as amended, in view of gross failure to implement the same.

19. It may be relevant to mention that it has emerged from the common Judgment and Order dated 21.10.2022 that by two Orders, both dated 18.07.2012, the two private respondents came to be appointed, pursuant to the recommendation of the NPSC, in the post of Inspector of Supply, Government of Nagaland. The Appointing Authority - the Director, Food and Civil Supplies, Nagaland sent its requisition for those vacancies in the posts of Inspector of Supply vide a Letter no. DSE/1/88-89 dated 14.12.2010 to the NPSC for direct recruitment through competitive examination. On receipt of the requisition, the NPSC vide an Advertisement no. 2/2010-2011 dated 31.03.2011 invited applications for the said post and the two private respondents submitted their candidature in response to the Advertisement. In the examination conducted in pursuance of the Advertisement, the two private respondents were declared successful and accordingly, they were recommended by the NPSC for appointment.

19.1. One of the contentions advanced by the two private respondents when they as the writ petitioners preferred the writ petition, W.P.[C] no. 62/2019, was that their seniority had to be counted from the time when the requisition was made by the Department of Food and Civil Supplies, Government of Nagaland to the NPSC and to buttress their such contention, they have relied upon a decision of the Hon'ble Supreme Court of India in **Union of India and others vs. N.R. Parmar and others**, reported in [2012] 13 SCC 340. Such claim for seniority made by the two private respondents was opposed by the side of the two appellants on the ground that the principle laid down in the two-Judge decision in **N.R. Parmar** [supra] could not be followed as the same was overruled subsequently by a three-Judge decision in **K. Meghachandra Singh and others vs. Ningam Siro and others**, reported in [2020] 5 SCC 689.

19.2. The learned Single Judge after considering the principles laid down in the aforementioned two decisions and few other decisions and taking note of the fact that the decision in **N.R. Parmar** [supra] has been overruled by **K. Meghachandra Singh**

[supra], has negated the claim of the two writ petitioners therein, that is, the two private respondents herein as regards their seniority from the time when the requisition was made. The learned Single Judge has held that the two petitioners therein can be said to have been recruited only on the date on which their appointments orders were issued or when they were actually appointed. The learned Single Judge has thereafter, proceeded to hold that the said two writ petitioners' inter se seniority could not have been fixed from the date on which requisition to fill up vacancies in the posts to which they were appointed or promoted, was forwarded. If the same was done, it would have been against the provisions of Rule 15 [ii] of the Service Rules, as amended, and the settled principles of law. The learned Single Judge has, thus, held that the claim of the two petitioners in the writ petition, W.P.[C] no. 62/2019 is not tenable as far as their prayer for re-fixing the inter se seniority between them and the private respondents therein, which included the appellant no. 1 herein, is concerned.

19.3. The learned Single Judge has proceeded to hold that for the purpose of inter se seniority between the promotee Inspector of Supply and the direct recruits Inspector of Supply the provisions of Rule 15 [ii] of the Service Rules, as amended, would apply. Thereafter, the learned Single Judge has proceeded to observe as under :-

17. A glance at the Tentative Seniority List, makes it apparent that the provisions of the said rule has been applied and their inter se seniority has been fixed accordingly. As such, there is no reason to interfere with the same. As stated above, the case of the petitioners in WP(C)/124/2019, as submitted by the learned senior counsel, Mr. R. Iralu is that, though the Rules of 2002, came into existence from the date it was notified, it has never been applied in the past in the fixing of inter-se seniority of the direct recruits and the promotees, therefore applying the same at this juncture would highly be discriminatory, inequitable, arbitrary, illegal and violative of the fundamental rights of the petitioners under

Article 14 and 16 of the Constitution. But nowhere in the pleadings, the petitioners have shown how and why it would be so. As such, the submission is without any basis. Further, just simply because the rule has not been applied in the past it does not mean that it can never be applied. A rule is made by a legislature after several discussions or deliberations and it is made to be followed or applied unless it violates any provisions of the Constitution, or unless it is grossly unreasonable and illegal. As such, it has to be implemented or followed for the fulfillment of the purpose for which it is made. In these two cases, the issue of seniority is limited to the parties involved only. Therefore, by the application of the Rules of 2002 in fixing the inter-se seniority of the petitioners and the respondents, no other person is going to be adversely affected. Moreover, this Court finds nothing wrong or illegal in applying the provisions of the Rules of 2002 while fixing the inter-se seniority of the petitioners in WP(C)/124/2019 and the respondents therein, who are the petitioners in the other writ petition, i.e., WP(C)/62/2019. It may also be mentioned here that the petitioners in WP(C)/124/2019, did not challenge the rule, and the way or the manner in which it has been implemented. The only ground on which the seniority list is challenged as stated above, is, the sudden implementation of the same. However, in this also, they have not shown sufficient grounds as to why the seniority list should be interfered with on that ground.

18. Taking into account all that has been stated above, this Court finds no merit in the two writ petitions. Therefore, the tentative seniority list of Civil Supply Inspectors prepared as on 19.11.2018, is not interfered with as far as the parties involved in the two writ petitions are concerned. The two writ petitions are dismissed accordingly.

20. In the three-Judge decision in **K. Meghachandra Singh** [supra], the dispute was an inter se seniority dispute between the direct recruits and the promotees in the Manipur Police Service Grade - II Officers cadre and the matters of recruitment and conditions of service of the direct recruits and the promotees were governed by the Manipur Police Service Rules, 1965 [‘the MPS Rules, 1965’, for short]. When in a final seniority list of the MPS Grade - II Officers the direct recruits were placed above the promotees, the promotees challenged the same before the High Court by a writ petition contending that they entered the MPS Grade - II cadre on 01.03.2007 whereas the concerned direct recruits, arrayed as private respondent nos. 3 to 33 therein, were appointed subsequently on 14.08.2007 and 24.11.2007 respectively and, therefore, they should be regarded as senior to the direct recruits. The direct recruits therein, on the other hand, claimed seniority over the promotees-writ petitioners by contending that seniority had to be decided in accordance with the year of the vacancy and not by the fortuitous date on which the appointment could be finalized for the direct recruits. The learned Single Judge determined that the impugned seniority list was bad in law and set it aside after holding that as the promotees entered into the cadre ahead of the direct recruits and it was held that a direct recruit could claim seniority only from the date of his regular appointment and could not claim seniority from a date when he was not borne in the service. A direction was made to prepare a seniority list afresh in respect of the MPS Officers after taking into account the observations made. When a writ appeal was preferred by the direct recruits, the Division Bench upheld the conclusion of the learned Single Judge holding that the promotees would naturally have seniority over the appellants-direct recruits as the promotees had entered the cadre of MPS Grade - II, before the appellants - direct recruits were borne in the cadre.

20.1. The relevant provisions of the MPS Rules, 1965 on which the inter se seniority dispute in **K. Meghachandra** [supra] was decided were as follows :-

31.1. Rule 28[i]

In the case of persons appointed on the result of competitive examination or by selection under clause [b] of sub-rule [1] of Rule 5, seniority in the service shall be determined by the order in which appointments are made to the service.

31.2. Rule 28[iii]

The relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between direct recruits and promotees as determined under Rule 5 for that year and the additional direct recruits selected against the carried-forward vacancies of the previous year would be placed en bloc below the last promotees [or direct recruits, as the case may be].

The seniority of the officer so appointed under sub-rule [3] of Rule 16, shall be counted from the date, he/she is appointed to the service.

20.2. Analyzing the afore-quoted rules in the MPS Rules, 1965, the Hon'ble Supreme Court has held that Rule 28 has shown that seniority in the service shall be determined based on the date of appointment to the service. It has been observed that Rule 28 [i] of the MPS Rules, 1965 is applicable to both promotees and direct recruits and it has provided that seniority shall be determined by the order in which the appointments are made to the service. It has been further observed that if seniority under Rule 28 [i] is to be determined based on the date of appointment, it cannot be said that for the purpose of Rule 28 [iii], the seniority of direct recruits should be determined on the basis of the date of initiation of the process. The Hon'ble Supreme Court while dismissing the appeals, has upheld the orders in the writ petition and the writ appeal and directed the State of Manipur to prepare the inter se seniority list in the MPS Grade - II cadre in light of the discussion made and the High Court's orders.

21. It is relevant to mention that the Hon'ble Supreme Court in **K. Meghachandra**

[supra] has also referred to the decisions in Pawan Pratap Singh and others vs. Reevan Singh and others, [2011] 3 SCC 267 and State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and another, [2014] 14 SCC 720, and has observed that the subsequent decision in Ashok Kumar Srivastava [supra] has approved the ratio in Pawan Pratap Singh [supra] by concurring with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service rules. The relevant excerpts are quoted hereinbelow :-

30. We may also benefit by referring to the judgment in State of U.P. vs. Ashok Kumar Srivastava [State of U.P. vs. Ashok Kumar Srivastava, [2014] 14 SCC 720 : [2015] 3 SCC [L&S] 536]. This judgment is significant since this is rendered after the N.R. Parmar [Union of India vs. N.R. Parmar, [2012] 13 SCC 340 : [2013] 3 SCC [L&S] 711] decision. Here the Court approved the ratio in Pawan Pratap Singh vs. Reevan Singh [Pawan Pratap Singh vs. Reevan Singh, [2011] 3 SCC 267 : [2011] 1 SCC [L&S] 481], and concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant Service Rules. The Supreme Court held that seniority cannot be given to an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in Ashok Kumar Srivastava [State of U.P. vs. Ashok Kumar Srivastava, [2014] 14 SCC 720 : [2015] 3 SCC [L&S] 536] being the one appealing to us, is profitably extracted as follows : [SCC p. 730, para 24]

“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh vs. Reevan Singh [Pawan Pratap Singh vs. Reevan Singh, [2011] 3 SCC 267 : [2011] 1 SCC [L&S] 481] where the Court after referring to earlier

authorities in the field has culled out certain principles out of which the following being the relevant are produced below : [SCC pp. 281-82, para 45]

‘45. [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.

* * *

[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.’ ”

22. Reverting back to the facts of the case in hand, the principle to be followed regarding seniority of the promotees is discernible from Rule 11 and Rule 12 of the Service Rules, as amended. The DPC has to prepare the select list of candidates eligible/suitable for promotion on the basis of merit-cum-seniority and in order of preference and the appointments by promotions are to be made by following the order

in which the names appear in the select list. On a closer look of Rule 15 [i] of the Service Rules, as amended, it is discernible that Rule 15 [i] has prescribed only on the aspect of seniority of direct recruits, unlike Rule 28 [i] of the MPS Rules, 1965, which provided for seniority of both promotees and direct recruits. As per Rule 15 [i] of the Service Rules, as amended, the seniority of the members of the Service recruited directly by competitive examination in a particular cadre shall be in order in which their names are arranged in the select list, if the members joined their posts within 30 days from the date of issue of the order of appointment. In other words, the relative seniority of the direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendation of the selecting authority, which is the NPSC in the present case. It is needless to mention that direct recruits appointed as a result of an earlier selection would be senior to those as a result of subsequent selection. It is clearly evident that Rule 15 [i] of the Service Rules, as amended, is only applicable to the direct recruits and is not applicable to the promotees. From a combined reading of Rule 11, Rule 12 [1] and Rule 15 [i] of the Service Rules, as amended, it does not emerge that for the purpose of determining inter se seniority between the promotees and the direct recruits, the criterion is the date of entry in the Service or the date of substantive appointment, as the case may be, which is ordinarily the criterion for fixing seniority.

23. As per Rule 15 [ii] of the Service Rules, as amended, the relative seniority of the direct recruits and the promotees recruited and promoted respectively in the same year shall be determine accordingly to the rotation of vacancies between the direct recruits and the promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Schedule - II with the promotee ranking senior to the direct recruit. As per Rule 2 [xi], 'year' means the calendar year. In the Schedule - II to the Service Rules, as amended, it has been prescribed that the percentage of post in the cadre of Inspector of Supply to be filled up by direct recruitment and departmental promotion is 50% and 50% respectively. In other words, against one post to be filled up by direct recruit the next post in the cadre of Inspector of Supply is to be filled up by a promotee, meaning thereby, in a

seniority list in the post/cadre of Inspector of Supply, the alternate positions are to be held by the promotees and the direct recruits with the first in the select list of promotees promoted in the same calendar year ranking senior to the first in the select list of direct recruits recruited in the same calendar year.

24. From the Second List of Seniority, that is, the tentative seniority list as on 19.11.2018, extracted in paragraph 4.2 above, or for that matter, from its abridged version, extracted in paragraph 4.5 above, it is evident that the four members of the Service in the post/cadre of Inspector of Supply, namely, [i] Grace Metha; [ii] Neilhoulie Seyie [the appellant no. 1]; [iii] Vihinu John [the appellant no. 2]; and [iv] Ntsemo Lotha were promoted to the post/cadre of Inspector of Supply on the same date, that is, on 29.02.2012. It is also evident from the said tentative seniority list, the two private respondents herein came to be appointed as direct recruits in the post/cadre of Inspector of Supply on 19.07.2012. When the expression, 'the same year' appearing in Rule 15 [ii] is read together with the definition of 'year' provided in Rule 2 [xi], it emerges that all the afore-mentioned four promotees and the two direct recruits were promoted and recruited in the same year, that is, the calendar year 2012. If one goes by the provisions contained in Rule 15 [ii] of the Service Rules, as amended, then it is clearly discernible that *firstly*, the inter se seniority positions of the four promotees, namely, [i] Grace Metha; [ii] Neilhoulie Seyie [the appellant no. 1]; [iii] Vihinu John [the appellant no. 2]; and [iv] Ntsemo Lotha, were determined as per their respective positions recommended by the DPC and as recorded in the Order dated 29.02.2012 of the Director, Food and Civil Supplies, Nagaland, referred above; *secondly*, the inter se seniority positions of the two direct recruits, that is, the respondent no. 3 and the respondent no. 4 herein were fixed as per their respective merit positions in the select list prepared by the NPSC; and *thirdly*, the relative inter se seniority of the four promotees and the two direct recruits have been fixed following the prescribed rule of 50% by promotion and 50% by direct recruitment in the ratio of 1 : 1 with the first in the select list of promotees, Grace Metha promoted in the calendar year, 2012 ranking senior to the first in the select list of direct recruits, Moanungsang [the respondent no. 3] recruited in the same calendar year, 2012.

Similarly, Moanungsang [the respondent no. 3] is followed by the second in the select list of promotees, Neilhoulie Seyie [the appellant no. 1]. The position of the second in the select list of direct recruits, Allen Imchen [the respondent no. 4] is below Neilhoulie Seyie [the appellant no. 1]. The position of the third in the select list of promotees, Vihinu John [the appellant no. 2] is below Allen Imchen [the respondent no. 4]. As there was no third direct recruit in the calendar year 2012, the fourth person in the select list of promotees, Ntsemo Lotha has occupied the position below Vihinu John [the appellant no. 2]. When a pointed query is made to the learned counsel for the parties to the effect that *arguendo*, Rule 15[ii] of the Service Rules, as amended, is applicable qua the contesting parties whether the same is found to have been applied correctly and properly in preparing the tentative seniority list of Inspector of Supply as on 19.11.2018, the learned counsel for the parties have answered in the affirmative.

25. It is not in dispute that it is open for the Government, while constituting a service, to provide for recruitment to it from more than one source and also to reserve quota for each source. It is equally open to the Government to provide for seniority rule related to rotation of vacancies. This rule, in service parlance, is usually called the quota rule of recruitment and rota rule of seniority interlinking them. 'The quota - rota rule' is a principle based on a quota allocation and rota system. The quota - rota rule is applied when there are more than one feeder grade for promotion to a higher grade or more than one source of recruitment and/or promotion to fill up vacancies in one grade and specific quota for each grade or source is given in the relevant service rules. For example, if there are two sources [i] by direct recruitment; and [ii] by promotion from the feeder grade/cadre; to fill up the vacancies of a particular cadre, the quota - rota rule can be applied, if provided in the relevant service rules, to determine inter se seniority between the direct recruits and the promotees.

26. It is a settled legal proposition that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. The legal position is

equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and it is the rule providing the method of fixation of inter se seniority which shall prevail, subject to its constitutionality. There is no dispute to the fact that under Rule 15 [ii] of the Service Rules, as amended, dealing with the recruitment and promotion to the grade of Inspector of Supply a quota has been fixed and provision has been made for manning of the cadre of Inspector of Supply both by direct recruits and by the promotees at 50 : 50 basis.

27. The appellants' side has relied in the decision in **G.S. Lamba** [supra]. In **G.S. Lamba** [supra], the subject-matter is a inter se seniority dispute between promotees and the direct recruits in an integrated Grade - II and III in the General Cadre of the Indian Foreign Service Branch 'B' [IFS 'B', for short] and their conditions of service were regulated by the Indian Foreign Service Branch 'B' [Recruitment, Cadre, Seniority and Promotion] Rules, 1964 ['1964 Rules', for short]. Recruitment to integrated Grade - II and III of the General Cadre of IFS 'B' was from two independent sources, namely, [i] direct recruitment on the result of a competitive examination held by the Union Public Service Commission [UPSC] for the purpose from time to time; and [ii] by the substantive appointment of persons included in the select list for integrated Grade - II and III of the General Cadre. The select list for the purpose of filling vacancies by substantive appointment was to be prepared from persons coming from two independent sources, namely, [a] persons to be promoted on the basis of a limited competitive examination; and [b] promotion from feeder Grade - IV. As per the 1964 Rules, one - sixth of the substantive vacancies in the integrated Grade - II and III were to be filled in by direct recruitment and the remaining five - sixth of the vacancies were to be filled up from the others. Rule 25 [1] has provided for seniority inter se of the officers appointed to integrated Grade - II and III of the General Cadre from different sources. As per Rule 25 [1][ii], direct recruits and persons substantively appointed from the select list to the integrated Grade - II and III were to be assigned seniority inter se according to the quotas of substantive vacancies in the grade reserved for direct recruitment and the appointment of persons included in the select list by the concerned Departmental Promotion Committee [DPC], respectively.

27.1. In **G.S. Lamba** [supra], it was the promotees who challenged two seniority lists of officers in the integrated Grade - II and III of the General Cadre of IFS 'B' as on 25.06.1979 and 30.06.1983 respectively. The challenge was made as the impugned seniority lists were drawn up rotating vacancies for each source and if no recruitment was made from a source in a given year [primarily by direct recruitment], the place in the list available to the source as per rotation was kept open and a later recruit at any distance point of time from that source would be assigned that place over persons who were already recruited from other sources and would be working in substantive vacancies. As a result, the net effect of the drawn up seniority lists in that manner was that a promotee in a given year even in its quota may go down to a much later direct recruit as the place in rotation was kept open for him without limitation of time. The questions arose were if Rule 25 [1][ii] which provided for inter se seniority of direct recruits to a grade and persons substantively appointed to the grade from the select list for the grade, upon its true construction permitted leaving open placement in the seniority list to be filled in at a later date by recruits coming from the source for whom placements accordingly to rotation were kept open; and whether such rule or such implementation of the rule of seniority would be violative of Article 16.

27.2. It has been observed in **G.S. Lamba** [supra] to the effect that the rotational rule of seniority is linked with the quota rule and if the quota rule is not strictly implemented and there is large deviation from it regularly from year to year, it would be discriminatory and unjust to give effect to the rotational rule of seniority. *It has been observed that it was implicit in sub-clause [ii] or Rule 25 [1] that it would operate at a time when in a given year almost simultaneously or within a measurable distance each other recruitment is made from all the sources. As an illustration, it has been recorded that if in a given year, candidates were selected for appointment to the grade by direct recruitment as well as by promotion including promotion by limited competitive examination and if all the three entered the service or the grade at or almost at the same time or within the year and within a reasonable time lag from each other, Rule 25 [1][ii] catering to the situation, would help in integrating*

appointees from all the sources to be integrated into the common seniority list according to quota. But, if there was enormous deviation from the quota rule and there was substantial time lag, it would be unjust, iniquitous and unfair to give effect to the rota rule. The Court has found that in view of enormous departure and the quota rule was not adhered to the rota rule for inter se seniority as prescribed in Rule 25 [1][ii] could not be given effect to and the impugned seniority lists were quashed and set aside, observing that the continuous officiation in the cadre, grade or service would be a valid principle of seniority in the case.

28. At the cost of repetition, it is noticed that in **G.S. Lamba** [supra], it has been shown as an illustration to the effect that if in a given year, candidates were selected for appointment to the grade by direct recruitment as well as by promotion including promotion by limited competitive examination and if all of them entered the service or the grade at or almost at the same time or within the year and within a reasonable time lag from each other, Rule 25 [1][ii] catering to the situation, would help in integrating appointees from all the sources to be integrated into the common seniority list according to quota. The same situation has occurred in the case in hand. If either the First List of Seniority, as on 31.03.2016, or the Second List of Seniority, as no. 19.11.2018, are looked at it is clear that only in the calendar year, 2012, four incumbents were promoted from the post/cadre of Sub-Inspector of Supply to the post/cadre of Inspector of Supply and two candidates were directly appointed to the post/cadre of Inspector of Supply bringing Rule 15 [1][ii] of the Service Rules, as amended, into operation. Other than the calendar year, 2012, such situation did not occur in any of the calendar years in the First List of Seniority and the Second List of Seniority, which covered the years from 2007 to 2016, to apply Rule 15 [1][ii] of the Service Rules, as amended.

29. In the above backdrop, one of the contentions, as rightly recorded by the learned Single Judge, agitated by the appellants which has remained for consideration is that the quota - rota rule of seniority, embodied in Rule 15 [1][ii] of the Service Rules, as amended, had never been applied earlier. Such contention appears to have

no force for the fact that sub-rule [iv] of Rule 5 of the Service Rules, as amended, has clearly prescribed that if sufficient number of candidates for the post pertaining to any source of recruitment, that is, [a] by direct recruitment by competitive examination/selection; or [b] by promotion from the lower grade; is not available in the course of recruitment in a calendar year, the quota pertaining to that source shall lapse. In other words, if in a calendar year, no direct recruitment is made in the post/cadre of the Inspector of Supply and if promotions are made to the post/cadre of Inspector of Supply in the said calendar year, their inter se seniority would be regulated by Rule 11 and Rule 12 of the Service Rules, as amended, alone. Similarly, if in a calendar year, no promotion to the post/cadre of the Inspector of Supply is made and if direct recruitments are made to the post/cadre of Inspector of Supply in the said calendar year, then the rule of seniority contained in Rule 15 [i] of the Service Rules, as amended, is applicable. It is only in the situation where promotions and direct recruitment to the post/cadre of Inspector of Supply is made in the same calendar year, then the rule of inter se seniority, that is, the quota - rota rule contained in Rule 15 [1][ii] of the Service Rules, as amended, becomes applicable and it is the situation which have happened exactly in the case in hand.

30. The other contention advanced on behalf of the appellants that the changes in the inter se seniority positions between the promotees and the direct recruits were made belatedly, on consideration only deserves to be discarded. As the conditions of service including the issue of seniority, of the private respondents after their appointments in the year 2012, were required to be regulated by the Service Rules, as amended, the private respondents had every right to represent before the official respondents that their conditions of service including inter se seniority qua the promotees promoted in the same calendar year should be regulated strictly by the Service Rules, as amended. From the sequence of events, it is clearly discernible that after the private respondents had submitted their representations agitating their grievance on the issue of fixation of their inter se seniority positions qua the promotees before the official respondents, the official respondents acted on it and published the Second List of Seniority, as on 19.11.2018, by effecting changes

following Rule 15 [1][ii] of the Service Rules, as amended. Thus, it cannot be said that there was any delay involved in the process of re-fixation of inter se seniority positions between the two appellants and the two private respondents. Consequently, the upgradation of posts from Inspector of Supply to Senior Inspector of Supply and the promotions given effect to, during the interregnum, vide the Office Memorandum dated 26.04.2017 and the Notification dated 24.07.2017, would have to abide by the outcome reached in connection with the Second List of Seniority in respect of Inspector of Supply in the Department of Food and Civil Supplies, Government of Nagaland, as on 19.11.2018.

31. Under Article 309 of the Constitution of India, the Legislature is empowered to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to article 309, inter alia, empowers the Governor, in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. It is settled that rules made under the proviso to article 309 to the Constitution of India are legislative in character and, thus, such rules are constitutional rules, not like rules under a statute. They have the same force as a statute, though made by the executive. It is not a piece of delegated legislation like a rule made under a statute. It is not the law that a statutory rule becomes inoperative by lapse of time. A statutory rule can be wiped out from existence only by express or implied repeal.

32. It is pertinent to mention that the two appellants – writ petitioners in the writ petition, W.P.[C] no. 124/2019 have not challenged the vires of Rule 15 [1][ii] of the Service Rules, as amended. The two appellants herein as the writ petitioners in the writ petition had sought for a direction to the respondent no. 1 to consider amending Rule 15 [1][ii] of the Service Rules, as amended. The State respondents are under obligation to follow the Service Rules, as amended, and to give effect to the provisions including Rule 15 [1][ii], contained in the Service Rules, as amended, and neither the

State Government can act contrary to the Service Rules nor the Court can direct the State respondents to act contrary to the Service Rules, as amended, and for that matter, to act contrary to the quota - rota rule contained in Rule 15 [1][ii] thereto. It is trite law that no mandamus lies for issuing directions to the State respondents to refrain from enforcing a provision of law. Any direction in the nature of mandamus directing the State respondents to act in contravention of the Service Rules, as amended, in the absence of any challenge to its vires, would amount to a direction compelling the State respondents to violate the law. A direction to consider amending Rule 15 [1][ii] of the Service Rules, as amended, is therefore, clearly uncalled for.

33. Summing up, the upshot of the discussion made above and for the reasons recorded therein, this Court has not found any reason, not to speak of any good and sufficient reason, to interfere with the Judgment and Order dated 21.10.2022 passed in connection with the writ petition, W.P.[C] no. 124/2019, preferred by the two appellants as the writ petitioners. As a consequence, the present intra - court appeal is found to be devoid of any merits and it is deserved to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

JUDGE

Comparing Assistant