

GAHC020004282025

2025:GAU-NL:504



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

Case No. : WP(C)/128/2025

SHRI T. AKON PHOM AND 15 ORS
S/O THAPONG PHOM, R/O THAHEKHU, DIMAPUR, NAGALAND

2: SMTI. Y. HOPILA
D/O YANGTSABA
R/O DIMAPUR
NAGALAND

3: SHRI CHUMBEN
S/O LT. YANTSIO
R/O KHERMAHAL
DIMAPUR
NAGALAND

4: SMTI. CHRISTIE ACHUMI
D/O TOSHEVI ACHGUMI
R/O THILUXU
DIMAPUR
NAGALAND

5: SHRI Y. CHEMLISE SANGTAM
S/O YANGTSABA
R/O TUENSANG
NAGALAND

6: SHRI MUGHAHUTO KIBA
S/O BENJAMIN KIBA
R/O KUHUBOTO
NUILAND
NAGALAND

7: SHRI TINGZANG KONYAK
S/O KHAMPO

R/O NYASHA
MON
NAGALAND

8: SHRI VIKA ACHUMI
S/O LHOVITO ACHUMI
R/O NOTUN BOSTI
DIMAPUR NAGALAND

9: SHRI KANITO SUKHAI
S/O ZHIMO K SUKHAI
R/O DIMAPUR
NAGALAND

10: SHRI AVITO SEMA
S/O LT. KIHOFI SEMA
PWD DIMAPUR
NAGALAND

11: SHRI YAMO KONYAK
S/O PENONG
MON
NAGALAND

12: SHRI AKIHITO V ZHIMO
S/O VIKHESHE ZHIMO
R/O VALLEY VIEW
DIMAPUR NAGALAND

13: SHRI ALOVIKA ACHUMI
S/O SHIKHETO ACHUMI
DAKLANE
KOHIMA NAGALAND

14: SHRI C. TAIPO KONYAK
S/O M. CHINGOH K
R/O MON
NAGALAND

15: SHRI ATOKIVI Z. ZHIMO
S/O ZHIMO
R/O KHERMAHAL
DIMAPUR NAGALAND

16: SHRI TOKHUPU V YEPHO
S/O VITOSHE
R/O ZUNHEBOTO
NAGALAN

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY. GOVT. OF NAGALAND,
NAGALAND KOHIMA

2:THE SECRETARY
EXCISE AND PROHIBITION DEPT. NAGALAND KOHIMA

3:THE COMMISSIONER OF EXCISE AND PROHIBITION AND
CHAIRMAN
DEPARTMENTAL RECRUITMENT BOARD
(DRB)
EXCISE DEPT. NAGALAND DIMAPUR

4:THE JOINT COMMISSIONER OF EXCISE (HQ)
CONVENOR
DEPARTMENTAL RECRUITMENT MANAGEMENT COMMITTEE
(DRMC) FOR PHYSICAL TEST
NAGALAND DIMAPUR

Advocate for the Petitioner : TONGPOK PONGENER, KETI IMCHEN,VIKEHIENUO
VIMERHA,ASENLA S LKR,AKUM AIER,LAKNYEI PHOM,AKUM JAMIR

Advocate for the Respondent : GOVT ADV NL,

BEFORE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner	: Mr. TongpokPongener
For the State respondents	: Ms. V. Suokhrie, Add. Advocate General

Date of Hearing	: 07.10.2025
Date of Judgment	: 16.10.2025

JUDGMENT & ORDER (CAV)

The petitioners numbering 16 in total have come before this Court praying for: (i) quashing and setting aside the impugned Notification No. EX-1/ESST/1/2022 dated 28th April, 2025 notifying constitution of the Departmental Recruitment Board (DRB for short), (ii) for quashing and setting aside the Impugned Corrigendum No. EX-1.ESST/1/2022/642-43 dated 04.06.2025, by which a written test in the interview process was included midway through the recruitment process, (iii) for quashing and setting aside the physical test being conducted allegedly in contravention of Memorandum No. EX-5/3/2000/6036 dated 19.07.2016 and also for (iv) a direction to the State respondents to re-constitute the Departmental Recruitment Board in consonance with the service rules and to conduct the recruitment process strictly in terms of the Advertisement No. Ex.1/ESTT/1/2022 dated 07.04.2025 and also (v) for a direction to re-conduct physical test in terms of the standard laid down in the Office Memorandum No. EX.5/3/2000/6036 dated 19.07.2016.

2. Heard learned counsel for the petitioner Mr. Tongpok Pongener and Additional A.G, Ms. V. Suokhrie, for the State respondents.

3. The case of the petitioners' is that by an Advertisement No. EX.1/ESST/1/2022 dated 07.04.2025, applications were invited for filling up 40(forty) posts of Excise Constables. The Advertisement laid down detailed Criteria and requirements, and at Sl. No. 4 of the Advertisement

regarding the recruitment process, it was stated specifically that the recruitment process shall consist of: (a) *Physical Test*. (b) *Suitability Test (Viva-Voce)*. It is stated that in previous Advertisements on 10.07.2018 and 19.08.2019 also the recruitment process for Excise Constable involved only physical test and suitability test.

4. It is further stated that the Office of the Commissioner Excise and Prohibition had brought out an Office Memorandum No. EX-5/3/2000/6036 dated 19.07.2016 for field staff wherein, it was stated that those candidates who meet the prescribed Physical Standards as specified will be put through the Physical Efficiency Test (PET) as indicated:-

	<i>Males</i>	<i>Females</i>
(a) 100 Meters race	<i>In 16 seconds</i>	<i>In 18 seconds</i>
(b) 800 Meters race	<i>In 3 minutes</i>	<i>In 4 minutes</i>
(c) Long Jump	<i>3.5 Metres</i> <i>(3 chances)</i>	<i>2.75 Metres</i> <i>(3 chances)</i>
(d) High Jump	<i>1.05 Meters</i> <i>(3 chances)</i>	<i>0.90 Meters</i> <i>(3 chances)</i>
(e) Shot Put (7.26 Kgs.)	<i>4.5 Meters</i> <i>(3 chances)</i>	_____

5. The petitioners also stated that the impugned notification No. EX.1/ESTT/1/2022 dated 23.04.2025 constituted a 6 (six) member Board to be the Departmental Recruitment Board (DRB for short), which consist of the following:

- | | |
|--|------------|
| 1. Commissioner of Excise | : Chairman |
| 2. Representative of the P&AR | : Member |
| 3. Representative of the Law & Justice Deptt | : Member |
| 4. Representative of the Finance Department | : Member |

5. Representative of the Administrative Deptt : Member

6. Addl. Commissioner of Excise :Member

Secretary

6. It is the submission of the petitioner that this DRB constituted by Order dated 23.04.2025, is in contravention of Rule 7(1) of the Nagaland Excise Service (Revised) Rules 1999, (referred to as the Rules for short). It is stated that as per Rule 7(1) of the Rules the DRB has to consist of the Head of Department as Chairman, with representative from Administrative Department, and representative from P&AR Department as members and an Officer nominated by Head of Department from the Directorate as Member Secretary.

7. In response to the Advertisement dated 07.04.2025, the petitioners also submitted their applications. Subsequently, by an Addendum No.EX.1/ESST/1/2022/404-66 dated 14.05.2025 another additional 6(six) posts of Excise Constable were also advertised; it is stated that this Addendum was published after due approval by the Government with P&AR clearance and Finance concurrence.

8. It is also stated that by the impugned Corrigendum dated 04.06.2025, the DRB decided to include a written test in the selection process for the post of 46(forty six) Excise Constable and the candidates were asked to prepare for the written test accordingly. It is also stated that the decision to introduce the written test was made by the DRB without obtaining approval of the government. Further the syllabus for the written examination or type of questions that may be expected by the candidates

was never published at any given point of time.

9. It is the contention of the petitioners that upon coming to know about the impugned Corrigendum dated 04.06.2025, the petitioners' No. 6 and 8 submitted a representation dated 12.06.2025 stating that the written test is not a procedure for recruitment in the past and that introducing the written test after the publication of the advertisement and after the selection process had started would put them to a great disadvantage. The further contention of the petitioners is that Rule 5 of the Rules provide for the process of recruitment. In Rule 5 it is only provided that recruitment to the service shall be by direct recruitment through competitive examination/selection. And as per Rule 5, if the government wishes to adopt any method of recruitment other than that specified in Rule 5, the same has to be done in consultation with the commission.

10. The submission of the petitioners therefore, is that the Constitution of the DRB and the introduction of the written test is against the Rules and further the introduction of the written test after the advertisement is in violation of the established principle of law that the rules of the game cannot be changed midway through the game.

11. Further the petitioners also submit that the physical test began on 14.07.2025 and all the petitioners except the petitioner at Sl. No. 4 appeared in the physical test expecting that the physical test would be conducted in terms of the Memorandum dated 19.07.2016. However, only a Running Test for 800 mts, a Long Jump and Pull-ups were applied. Thus even the physical test was conducted in contravention of the

Memorandum dated 19.07.2016.

12. It is also the submission of the learned counsel for the petitioners that if any changes are to be made in the method of recruitment, it is only the government which can make the changes and not the DRB, and that too before the recruitment process begins. It is also submitted that the service Rules do not provide for a written examination for recruitment to the post of Excise Constable. It is the case of the petitioners that the respondents are changing the rules along the way as the process of recruitment start with the advertisement. The learned counsel therefore prays for quashing and setting aside the entire recruitment process and prays for conducting the recruitment process strictly in terms of the advertisement dated 07.04.2025 by conducting only the Physical Test and the Suitability Test (Viva Voce).

13. The learned counsel for the petitioner also submits that the State respondents cannot explain the advertisement or the impugned corrigendum by way of filing an affidavit subsequently, as the law is well settled that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned, and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order which is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds brought out later.

14. The learned counsel for the petitioners has relied on the following judgments to support his contentions:-

- i) ***TEJ PRAKESH PATHAK AND OTHERS Versus- RAJASTHAN HIGH COURT AND OTHERS*** reported in ***(2025) 2 SCC 1***
- ii) ***J&K HOUSING BOARD AND ANOTHER Versus- KUNWAR SANJAY KRISHAN KAUL AND OTHERS*** reported in ***(2011) 10 SCC 714***
- iii) ***K. MANJUSREE Versus- STATE OF ANDHRA PRADESH AND ANOTHER*** reported in ***(2008) 3 SCC 512***
- iv) ***MAHARASHTRA STATE ROAD TRANSPORT CORPN. AND OTHERS Versus- RAJENDRA BHIMRAO MANDVE AND OTHERS*** reported in ***(2001) 10 SCC 51***
- v) ***RASHMI METALIKS LIMITED AND ANOTHER Versus- KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY AND OTHERS*** reported in ***(2013) 10 SCC 95***

15. The learned Additional A.G basing her submissions on the affidavit-in-opposition filed on behalf of the State respondents Nos. 1, 2, 3 and 4 submits that the constitution of the DRB is in compliance with the direction of the Government of Nagaland vide Government Circular dated 19.09.2024; whereby a direction for setting up DRB in respect of all uniformed services was promulgated and it was directed that the DRB shall consist of representatives from the Administrative Department, P&AR, Finance and Law Department for recruitment of post in uniformed services exempted from the preview of NSSB as per Schedule A of the NSSB Regulations,2020. The Constitution of the DRB with the above mentioned representatives was necessitated to maintain transparent and fair recruitment and does not prejudice the petitioners in any manner.

16. Learned Additional A.G has also submitted that the recruitment process commenced by issuing the advertisement dated 07.04.2025;

whereas the DRB was officially notified on 23.04.2025, however, the approval of the government for constituting the DRB was already obtained on 25.03.2025. Therefore, the contention of the petitioners that the advertisement was issued first and subsequently the DRB was constituted is belied by the records.

17. The learned Additional A.G also submits that the DRB decided to include the written examination so as to conduct an impartial and fair recruitment and to give equal opportunity to all candidates. As such, the department issued the impugned Corrigendum dated 04.06.2025 informing all the candidates about the written test in the selection process for the post of 46 (forty six) Excise Constables and the same was widely published in the daily newspapers like Nagaland Post and Eastern Mirror.

18. It is further, submitted that the DRB had included the written examination as part of the recruitment process within the scope of the Nagaland Excise Services (Revised) Rules of 1999, wherein it is provided in Rule 5 that the recruitment shall be conducted by direct recruitment through competitive examination/selection. Therefore, the service rule allows the recruiting authority i.e, the DRB to design the selection process including written test, physical test, viva voce or any combination as long as it is fair and reasonable. Therefore, the DRB has included the written examination within the frame work of the Rules. Further the department vide Notification No.EX-1/21/03/1124-29 dated 25.07.2025 has notified that the written examination will be based on MCQ pattern carrying 100 marks and based on class VIII standard which is in compliance with the minimum educational requirements as notified in the Advertisement dated

07.04.2025. Issuing the Corrigendum dated 04.06.2025, to notify a written exam is legally valid as it aligns with the existing Rules. The Corrigendum was issued before the start of any assessment and sufficient time was given for the candidates to prepare for the same. It is also submitted that prior government approval is not necessary as the service rules already provides for competitive examination and as such, the entire procedure was done to ensure fairness in the selection of Excise Constables. In fact, the introduction of written examination eliminates the chances of any bias or favoritism in the process of recruitment. And the introduction of written exam does not put the petitioners in any disadvantageous position as the syllabus for the written examination was decided to be based on Class VIII standard and more so because the question patterns was to be MCQ only.

19. Learned Additional A.G also states that the introduction of written examination does not violate any Rules as Rule 5 (i) (a) of the Rules does not prohibit the DRB to prescribe written test. Further the advertisement clearly stipulates at Sl. No. 15 that any omission or commission will be rectified through notifications and addendums, and as such by Corrigendum dated 04.06.2025, the candidates were informed about the written test. Learned Additional A.G further submits that sufficient time was given to the candidates to prepare for the written test as the Corrigendum was published on 04.06.2025; whereas the physical test was to start only on 14.07.2025 and moreover the petitioners have not been able to satisfy this Court as to how a written test has prejudiced the petitioners.

20. Learned Additional A.G has also stated that the selection process decided by the DRB i.e, the Physical Test, Written Test and Viva Voce gives all the candidates a fair and transparent mode of selection and the service rules also implicitly allows the recruiting authority to design the selection process including written test, physical test or viva voce. Even for the requirements of the physical test i.e, Running, Long Jump and Pull Ups were notified and published in two leading newspapers of the State of so that all the candidates of the State should be aware about the same and be prepared. It is stated that the standards of physical test were not below the prescribed standards as per the Memorandum dated 19.07.2016. Learned Additional A.G submits that the constabulary is the backbone of an enforcement agency which requires not just physical fitness but also mental acumen which can be assessed only through written examination specially, when the nature of work includes arrest, registering complaints, FIR seizures etc.

21. In view of the above contentions, the learned Additional A.G has submitted that the present writ petition is devoid of merit and is liable to be dismissed as none of the petitioner's fundamental rights have been violated in the present case. The learned Additional A.G has relied on the case of **TEJ PRAKESH PATHAK AND OTHERS Versus- RAJASTHAN HIGH COURT AND OTHERS** reported in **(2025) 2 SCC 1** and **STATE OF ASSAM AND OTHERS Vrs ARABINDA RABHA AND OTHERS** reported in **(2025) 7 SCC 705**.

22. The Court has duly considered the submissions of the opposing counsels and has perused the pleadings of the parties and also the

authorities relied upon.

23. The Excise Department, Government of Nagaland has a service rule framed under Article 309 of the Constitution of India, namely the Nagaland Excise Service (Revised) Rules of 1999, (herein after referred to as the rules of 1999). Rule 5 of the Rules of 1999 under the heading recruitment provides:

5. RECRUITMENT:

“(i) Recruitment to the service after the commencement of these Rules shall be by any or all the following methods, viz:-

(a) By direct recruitment through competitive examination/selection.

(b) By promotion of members of the Service having put in minimum years of Service as prescribed in Schedule - IV.

(ii) Notwithstanding anything contained in sub-rule (i) if in the opinion of the Government the exigencies of the service so require, the Government may, in consultation with the Commission, adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may by order issue in this behalf, be prescribed, provided that the quota allotted to each source of recruitment under clause (a) and (b) of sub-rule (i) and the minimum educational qualifications and conditions for recruitment shall be as mentioned in Schedule - II and III.”

24. The method to be adopted for recruitment is not specified in the Rules except for the words “through competitive examination/selection.” However, Rule 5 (ii) would go to show that the Government may adopt any method of recruitment other than that specified in Rule 5(i) (a) and (b) in consultation with the Commission.

25. Rule 7 of the Rules of 1999 also provides for Constitution of a Selection Board/ Interview Board/ Departmental Promotion Committee for direct recruitment and promotion. It provides as under:-

“7. CONSTITUTION OF SELECTION/INTERVIEW BOARD AND DEPARTMENTAL PROMOTION COMMITTEE TO NON GAZETTED POSTS.

- | | |
|---|-------------------|
| (i) Head of the Deptt. | -Chairman |
| (ii) Representative from Admn Deptt. | -Member |
| (iii) Representative from P & AR Deptt. | -Member |
| (iv) An officer nominated by the
Head of Deptt. from the Directorate.” | -Member Secretary |

26. The grievance of the petitioner is threefold. Firstly, the petitioners have assailed the constitution of the 6 (six) member DRB by the impugned Notification dated 23.04.2025 on the ground that it is illegal and contrary to Rule 7 (i) of the Rules of 1999. The second grievance of the petitioners is that the impugned Corrigendum dated 04.06.2025 introducing a written test in the interview process was issued after the recruitment process had started and hence; is in violation of the settled law that the rules of the game cannot be changed after the game has started. Moreover, it is only the government which can prescribe the mode of recruitment and not the DRB. The third grievance of the petitioner is that while conducting the physical test, the DRB has not followed the Office Memorandum dated 19.07.2016.

27. In the Case of ***TEJ PRAKESH PATHAK (Supra)***, the Hon’ble

Supreme Court has held that the process of recruitment begins with the issuance of advertisement and ends with filling up of notified vacancies. The law is already well settled that the rules of the game cannot be changed midway or after the game has been played. In catena of cases, it has been consistently held that tinkering with the rules of the game once the recruitment process commences is illegal. In various judicial pronouncements, the law governing recruitment to public services has been termed as "the rules of the game." These rules can fall into 2(two) categories; one which prescribes the eligibility criteria of the candidates seeking employment and the other which stipulates the method and manner of making the selection. Hence, the law with regard to changing the rules midway would cover both these categories. In the present case, this Court is concerned with the method and manner of making the selection.

28. In Rule 5 of the Rules of 1999, it is provided that recruitment to the service shall be by direct recruitment through competitive examination/selection. A competitive examination/selection can be either written examination, physical test or viva voce or it can be all 3 (three). The government has the authority in absence of any specific procedure in the Rules to adopt any or all of the above aforementioned procedures for the selection process. Rule 7 of the Rules of 1999 provides that the DRB shall make a selection for direct recruitment to the post of Excise Constable. However the DRB is not empowered to prescribe the procedure or the method of the selection process. The same can only be prescribed by the government.

29. Upon going through the Advertisement dated 07.04.2025, it is observed that it has been specifically mentioned at paragraph 4 of the Advertisement that the recruitment process shall consist of a physical test and suitability test (Viva Voce). No written test has been mentioned in the Advertisement dated 07.04.2025. It is common knowledge that a candidate vying to apply for a certain post shall prepare himself/herself according to the recruitment process which is specified in the advertisement. If no written test is prescribed in the advertisement, the intending candidates will not prepare for the same, specially, when in previous years the recruitment process for the post of Excise Constable did not include a written test. The respondents are expected to act in a transparent, non-discriminatory and non-arbitrary manner while conducting the recruitment process. Good administration requires that public authorities should act in a particular manner and honor the promises made or practices established unless there is a good reason not to do so and in all its actions, the State is bound to act fairly and in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. In the case of **TEJ PRAKESH PATHAK (Supra)**, the Hon'ble Supreme Court stated that: "23. *The doctrine proscribing change of rules midway through the game, or after the game has played, is predicated on the rule against arbitrariness enshrined in Article 14 of the Constitution. Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus, while Article 16 is the species. Article 16 gives effect to the concept of equality in all matters relating to public employment.*"

30. In the case of ***Renu Vrs District Judge***, reported in **(2014) 14 SCC 50**, the Supreme Court held that, "16. *Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.*"

31. In the instant case the petitioners as well as all intending candidates have not been given a fair opportunity of preparing for the written test as the same was not notified in the advertisement dated 07.04.2025 when the process of recruitment started. The requirement for a written test was notified only on 04.06.2025, much after the process of recruitment had begun. There is no doubt that the government has the authority to prescribe any method of selection including a written test, however such method has to be made known in the initial advertisement itself instead of introducing the same midway after the recruitment process has started. Hence, the Corrigendum dated 04.06.2025, cannot stand the test of law in as much as the same has been issued much after the advertisement dated 07.04.2025. Additionally as per the Rules the DRB is also not empowered to introduce such mode of selection as it is only the government which can decide on the method of the selection process.

32. Upon going through the records, it is seen that the approval for the constitution of the DRB was obtained on 25th March, 2025 which was much before the advertisement of 7th April, 2025. It was a policy decision of the Government to include the representative of the Finance department and Law department in the DRB. Moreover, the petitioners have also not able to show any prejudice caused to them by the constitution of the DRB.

33. As far as the physical test is concerned, the department of Excise and Prohibition has issued a Memorandum dated 19.07.2016 by which certain physical and medical standards for selection to all post of field staff has been laid down. It is no longer res integra that government cannot supersede statutory rules by administrative instructions but if the Rules are silent on any particular point the government can fill up the gaps and supplement the Rules and issue executive instructions not inconsistent with the rules already framed. Similarly, in the absence of any specific physical and medical standard provided in the Rules of 1999 for physical test during recruitment the government has the authority to issue administrative orders and notifications laying down the same. This Court therefore does not find any illegality in the Memorandum dated 19.07.2016 and the department of Excise is under an obligation to follow the said Memorandum dated 19.07.2016 as far as physical and medical standards are concerned during recruitment of field staff.

34. In view of the above discussions and observations, the instant petition is allowed. The Impugned Corrigendum No.EX-1/ESTT/1/2022/642-43

dated 04.06.2025 is quashed and set aside, and the physical test conducted in contravention of the Memorandum dated 19.07.2016 is also quashed and set aside.

35. The State respondents, specifically the respondent Nos. 2,3 and 4 are directed to conduct the recruitment process strictly in terms of the advertisement No.EX.1/ESTT/1/2022 dated 07.04.2025 and Memorandum dated 19.07.2016 by having only the (a) *Physical Test*. And (b) *Suitability Test (Viva-Voce)* as advertised.

36. Alternatively, in the event the government decides to include a written test the State respondents shall issue a fresh advertisement compliant with the constitutional mandate and thereafter conduct the recruitment process in accordance with law.

The petition is disposed of with the above directions. No orders as to costs.

JUDGE

Comparing Assistant