

(2007) 02 GAU CK 0051
In the Gauhati High Court

Banikanta Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 335

Citation : (2007) 3 GLT 11

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Judgement

Ranjan Gogoi, J.—All these writ petitions being interconnected and their consequences being interdependent were heard together and are being disposed of by this common judgment and order.

For a better appreciation of the commonness and inter-dependence of the writ petitions and also to effectively appreciate the questions arising therein, the facts of each of the cases; the contentions advanced by the rival parties and the point/points arising may be briefly noted.

FACTS

2. (i) W.P. (C) No. 134 of 2004

(a) In this writ petition the petitioner, Md. Momtazuddin Ahmed, challenges the selections and promotions of the private Respondents 4 to 14 to the rank of Additional Chief Engineer in the Public Works Department (in short PWD) made on the basis of the Select List dated 24.7.2002 as also the Select List dated 19.12.2003. The case projected is that the petitioner's exclusion from the Select List dated 24.7.2002 for promotion from the post of Superintending Engineer to the post of Additional Chief Engineer was on account of the down grading of his ACR for the years 2001 and 2002 from "outstanding" to "very good", as made by the assessing authority. Consequently, in terms of the norms applicable, the petitioner was included in Category-II instead of Category-I and by virtue of his inter se seniority amongst the officers included in Category-II, the petitioner's

name could not be included in the Select List dated 24.7.2002. The promotions from the said select list made by orders dated 6.8.2002 and 27.12.2002 are challenged as illegal and void. The further challenge of the petitioner is in respect of a subsequent selection for promotion to the post of Additional Chief Engineer, on the basis of which a Select List dated 19.12.2003 was prepared wherein the petitioner was included at Sl. No. 17. According to the petitioner, the State Government acting pursuant to a judgment of this Court dated 7.4.2003 delivered in W.P. (C) Nos. 6274 and 6606 of 2002, in the case of Ramen Chandra Kalita and Ors. v. The State of Assam and Ors. reported in 2003 (3) GLT 369 laid down certain norms and guidelines for making promotion to the post of Additional Chief Engineer under the Assam Engineering (PWD) Service Rules, 1978. This was by Notification dated 28.4.2003. The criteria to be applied under the Rules in force is one of merit-cum-seniority. However, in making the said selection and consequential promotions the norms laid down by the Notification dated 28.4.2003 were not followed. Seniority was not given any role or recognition as spelt out by the said Notification. Consequently, the name of the petitioner appeared in Category-B and, therefore, included against Sl. No. 17 of the Select List dated 19.12.2003. Furthermore, as a consequence thereof, while the Respondent Nos. 10, 11, 12, 13 and 14, who were junior to the petitioner, were promoted on 16.12.2003, the petitioner was so promoted on a later date thereby adversely affecting his future prospects in service. The petitioner has also filed a Misc. Case, i.e., MC No. 251/2007 placing before the Court the fact that, in the meantime, a Select List dated 10.5.2006 has been prepared for promotion to the post of Chief Engineer, PWD, wherein his name appears at Sl. No. 3. According to the petitioner, the persons at Sl. Nos. 1 and 2 have, in the meantime, been promoted as Chief Engineers and that there is one vacant post of Chief Engineer. Consequently, dehors the contentions advanced in the writ petition, a prayer has been made for a direction to promote the petitioner against the available post of Chief Engineer stated to be vacant as on date.

(b) Before noticing the contentions advanced on behalf of the Respondents as against the projections made on behalf of the writ petitioner, it would be apposite to notice herein that some of the private Respondents whose promotions as Additional Chief Engineer have been challenged in the present writ petition, have, in turn, filed the connected writ petitions details of which will be noticed when the facts of the said writ petitions are taken up for consideration. It may also be noticed at this stage that the enforcement of the Notification dated 28.4.2003 sought by the writ petitioner in the present writ petition, has been assailed in some of the other writ petitions as not being in conformity with the principles governing the criteria of merit-cum-seniority.

(c) The stand of the Official Respondents in the case appears to be that the selection culminating in the Select List dated 24.7.2002 was made in accordance with the norms in force, which were adopted pursuant to the discussion dated 14.2.2001 of the Secretaries of the Technical Departments of the State. The said norms, according to the Respondents, are in conformity with the criteria of merit-

cum-seniority as spelt out by the Rules. The Respondents have also placed the records, in original, of the said selection to show that on due and proper application of the laid down norms, on the principle of merit-cum-seniority, no officer was found fit and eligible for being included in Category-1 and all officers under consideration were placed in Category-II. The merit position of each candidate category wise has to follow his inter se seniority in service and accordingly the name of the petitioner could not be included in the Select List dated 24.7.2002 keeping in mind the vacancies available. According to the Respondents, in the selection leading to the Select List dated 19.12.2003, the same criteria, i.e. dated 14.2.2001 was followed. The Notification dated 28.4.2003, though issued in the meantime, had to be kept in abeyance on account of pendency of a writ proceeding, i.e., W.P. (C) No. 9194/2003 at that point of time. Once again, on the basis of the original records, i.e., the minutes of the Selection Committee Meeting, it is contended by the State Respondents that the petitioner having secured 16 points had to be placed in Category-II in order of his inter se seniority amongst the officers included in the said Category-II. However, as some junior officers got included in Category-I by virtue of the marks/points secured by them on the basis of their service record, the said juniors were entitled to be placed at positions higher than the petitioner in the Select List. No illegality or infirmity has been occasioned on account of the said fact.

(ii) W.P. (C) No. 4602 of 2006

(a) The petitioner, Shri Ajay Chandra Bordoloi, is presently holding the post of Chief Engineer. In the writ petition filed, the petitioner challenges the entitlement of the Respondent No. 4, one Sri M.C. Boro, also a Chief Engineer, to promotion to the post of the Secretary in the department and the position of the aforesaid Respondent No. 4 at Sl. No. 1 of the Seniority List of Chief Engineers dated 4.11.2006.

(b) According to the petitioner in a Select List dated 7.5.2003, prepared for promotion to the post of Superintending Engineer, the petitioner was placed at Sl. No. 3 and the Respondent No. 4 at Sl. No. 35. Both of them were promoted to the post of Superintending Engineer on 7.5.2003; the Respondent No. 4 was so promoted against a backlog vacancy for ST (P) Candidates to which Category the said Respondent belongs. In the inter se Seniority List of Superintending Engineers published on 22.5.2003, the name of the petitioner appeared at Sl. No. 25 and that of the Respondent No. 4 at Sl. No. 26. According to the petitioner, in the Select List dated 19.12.2003 prepared for promotion to the post of Additional Chief Engineers, the name of the petitioner appeared at Sl. No. 7 and that of the Respondent No. 4 against Sl. No. 24. Both of them were promoted to the rank of Additional Chief Engineer on the same date, i.e., 26.12.2003. Yet, in the Seniority List of Additional Chief Engineers published on 22.1.2004, the name of the petitioner appeared at Sl. No. 9 whereas the name of the Respondent No. 4 appeared at Sl. No. 5. The petitioner submitted a

representation dated 27.1.2004 against the seniority assigned, notwithstanding which a selection for promotion to the post of Chief Engineer was held on 28.1.2004. In the Select List published on 30.1.2004, the name of the Respondent No. 4 appeared at Sl. No. 5, and thereafter, the said Respondent was promoted to the post of Chief Engineer on 19.6.2004. The petitioner's name not being included in the Select List dated 30.1.2004, he was so promoted on 23.6.2006 on the basis of a subsequent selection. According to the petitioner, though in the seniority list of Chief Engineers published on 16.2.2006, the name of the Respondent No. 4 was included against Sl. No. 6, yet in the Revised Seniority List of Chief Engineers published on 4.11.2006, the name of the said Respondent is virtually at Sl. No. 1, the two other persons above him, having retired in the meantime. In these circumstances, the petitioner has questioned the placement of the Respondent No. 4 at Sl. No. 26 of the Seniority List of Superintending Engineers dated 22.5.2003 and the position of the said Respondent at Sl. No. 5, i.e. above the petitioner in the Seniority List of Additional Chief Engineers dated 22.1.2004; the selection and promotion of the said Respondent to the higher post of Chief Engineer and the consequential seniority assigned to him in the cadre of Chief Engineer. The short ground on which the aforesaid challenge has been made appears to be that if the petitioner was placed above the Respondent No. 4 in the Select List dated 19.12.2003 for promotion to the post of Additional Chief Engineer and if both the petitioner and the Respondent No. 4 were promoted to the post of Additional Chief Engineer on the same date, i.e., 16.12.2003, how could the Respondent No. 4 be placed above the petitioner in the Select List of Additional Chief Engineers dated 22.1.2004 so as to make the said Respondent eligible for consideration to the higher post of Chief Engineer. Alternatively, it has been argued by the learned Counsel for the petitioner that if the challenge made in the writ petition is to be understood by the Court to be belated, thereby, disentitling the petitioner to an adjudication on merits, the petitioner being a Chief Engineer as on date, his name should also be included in the Seniority List of Chief Engineers published on 4.11.2006 so as to make the petitioner also eligible for consideration for promotion to the post of Secretary in accordance with the principle of merit-cum-seniority prescribed by the Rules.

(c) It has already been noticed that the promotion of the petitioner to the post of Additional Chief Engineer on the basis of the Select List dated 19.12.2003 has been challenged in WP (C) No. 134/2004 by one Mumtazuddin Ahmed. The Select List dated 10.5.2006 on the basis of which the petitioner has been promoted to the post of Chief Engineer by order dated 23.6.2006 has in turn been challenged in WP (C) No. 2603/06. The said facts are being noticed to indicate the inter-dependence of the writ petitions under considerations as indicated in the opening part of the present order.

(d) The State Respondents have filed an affidavit controverting the contentions advanced in the writ petition. The stand of the official Respondents in the case appears to be that the promotion of the Respondent No. 4 to the post of

Superintending Engineer made by order dated 7.5.2003 is against a backlog vacancy meant for ST (P) Candidates. It is, therefore, an accelerated promotion and consequently, keeping in mind the inter se seniority of the promotees in the feeder posts of Executive Engineers, the name of the Respondent No. 4 appeared at Sl. No. 26 of the Seniority List of Superintending Engineers published on 22.5.2003, though in the Select List the name of the said Respondent was at Sl. No. 35. The challenge to the seniority assigned to the Respondent No. 4 in the rank of Superintending Engineer by the Seniority List dated 22.5.2003 has also been sought to be defeated by the Official Respondents by contending that the said challenge is a highly belated one with no explanation, whatsoever, for the delay and that such seniority has become settled and has been acted upon. In so far as the assignment of seniority to the Respondent No. 4 in the rank of Additional Chief Engineer by the Seniority List dated 22.1.2004, notwithstanding the lower position of the said Respondent in the Select List dated 19.12.2003 and the fact that both the petitioner and the Respondent No. 4 were promoted to the posts of Additional Chief Engineer on the same day, i.e., on 26.12.2003, there is virtually no explanation forthcoming.

(e) In so far as the challenge with regard to the proposed promotion to the post of Secretary and the prayer for a direction to include the name of the petitioner in the Seniority List of Chief Engineers is concerned, the stand of the Official Respondents is that as on date there are four officers senior to the petitioner in the rank of Chief Engineer and the post of Secretary being a single post, the petitioner is clearly not within the purview of consideration for the said post of Secretary,

(iii) W.P.(C) No. 2603 of 2006

(a) In this writ petition the petitioner, Jan Mahammad Talukdar, assails the Select List dated 10.5.2006 prepared for promotion to the post of Chief Engineer, wherein the petitioner was placed at Sl. No. 7 and the Respondents 4 to 8 were placed at positions higher than the petitioner. By interim order dated 29.5.2006 passed by this Court, liberty was granted to the State to fill up the posts of Chief Engineer as available on the date of the order and a restraint was put on filling up of the posts that may become available subsequently. The promotions, if made, were to be subject to the result of the writ petition. Pursuant to the said interim order, by order dated 23.6.2006, the Respondent Nos. 4 and 5 were promoted to the posts of Chief Engineer and such promotions have been made subject to the result of the present writ petition. The Respondent No. 5, it must be noticed at this stage, is the petitioner in WP(C) No. 4602 of 2006.

(b) The Select List dated 10.5.2006 has been assailed primarily on the ground that the selection held by the application of the norms contained in the Notification dated 28.4.2003 is contrary to the principle of merit-cum-seniority as prescribed by the Rules. In this regard the case of the petitioner is that the Notification dated 28.4.2003, though ostensibly prepared pursuant to this Court's order and directions in the case of Ramen Chandra Kalita (supra), does

not conform to the requirements of the aforesaid order of this Court and furthermore is not in consonance with the well understood and accepted principles of the criteria of the merit-cum-seniority, as prescribed by the Rules. The Notification dated 28.4.2003 has also been assailed on the ground that the said Notification imposes an embargo on the Selection Committee from making a re-assessment of the gradings in the ACRs and furthermore that though enjoined by the Rules in force, the Notification dated 28.4.2003 does not contemplate a comparative assessment of the merit of the candidates under consideration on the basis of their entire service records.

(c) Additionally, contentions have been advanced to the effect that in the selection held for promotion to the post of Addl. Chief Engineer in the year 2004, on merit, the petitioner superseded several of his seniors in the feeder category; yet in the selection leading to the select list dated 10.5.2006, held on the basis of substantially the same ACRs the petitioner was placed well below the cut off point for promotion i.e. at Sl. No. 7.

(d) The State disputes the contentions advanced by the writ petitioner and contends that the petitioner himself has been the beneficiary of the Notification dated 28.4.2003 which was applied in an earlier selection to the post of Additional Chief Engineer. According to the State, pursuant to a selection held for promotion to the rank of Additional Chief Engineer, a Select List dated 19.10.2004 was published, wherein the name of the petitioner appeared at Sl. No. 5. The said selection was held in terms of the Notification dated 28.4.2003. In the said selection the petitioner superseded as many as 6 (six) officers and was placed at Sl. No. 5 of the select list. He was promoted to the post of Additional Chief Engineer on the basis of the aforesaid Select List; his seniority thereafter was fixed by Notification dated 16.2.2006. The petitioner did not raise any objection at that time with regard to the Notification dated 28.4.2003. No objection was also raised with regard to the selection for the post of Chief Engineer on the basis of which the Select List dated 10.5.2006 has been published. According to the State, the petitioner "offered" himself for selection and not being satisfied with his placement at Sl. No. 7, he has now instituted the writ petition calling into question the Notification dated 28.4.2003. The State, therefore, contends that the petitioner cannot be allowed to approbate and reprobate at the same time. Additionally, the State, by placing before the Court the records of the selections leading to the impugned Select List dated 10.5.2006, has contended that the petitioner is at Sl. No. 7 in order of seniority amongst the officers considered by the Selection Committee and even on merit he having secured 14.5. points, the petitioner is not entitled to be placed at any significantly higher position in the Select List dated 10.5.2006.

(iv) W.P. (C) Nos. 2668 & 2671 of 2006

(a) In both these writ petitions another Select List dated 10.5.2006 for promotion from the post of Superintending Engineer to the post of Additional Chief Engineer has been assailed. The ground urged in respect of the challenge

made is largely similar to what has been noticed while dealing with W. P. (C) No. 2603 of 2006. The petitioners contend that the Notification dated 28.4.2003 on the basis of which the selections were held, does not conform to the order of this Court dated 7.4.2003 passed in Ramen Chandra Kalita (supra) and the requirements of the principle of merit-cum-seniority. Specifically, it is the case of the petitioners that the principle of merit-cum-seniority is essentially a criteria of merit and seniority comes into operation only if merit is equal. If a junior officer is of better merit he must be allowed to steal a march over his senior, who is of lesser merit. According to the petitioners, such a position is not contemplated by the Notification dated 28.4.2003 which Notification, by its first part, requires placement of the officers under consideration into two different categories on the basis of their merit and, thereafter, by the second part award of marks for each completed year of service is contemplated; the addition of both sets of marks results in the final categorization of the candidates. In such final categorization, a junior but more meritorious officer can be put in a lower category purely by virtue of the marks secured on account of seniority, i.e., completed years of service. The Notification dated 28.4.2003 has also been assailed, as in W. P. (C) No. 2603/2006, on the ground that it specifically restrains the Selection Committee from re-evaluating and/or re-assessing the gradings recorded in the ACRs of the officers under consideration and furthermore on the ground that the said Notification does not contemplate a comparative assessment of the officers under consideration on the basis of the entire service records as required by the Rules in force.

(b) In W.P. (C) No. 2671/2006, the petitioner also complains of the downgrading of his ACR of the year 2005 from outstanding to good, resulting in award of less marks/credit and consequential lowering of his position in the Select List dated 10.5.2006 for promotion to the post of Addl. Chief Engineer.

(c) The contentions advanced on behalf of the State in the affidavits filed in the two cases under consideration are broadly same and similar to what has been noticed while considering the objections of the State in WP (C) No. 2603 of 2006, namely, that the petitioners have been the beneficiaries of application of the same Notification dated 28.4.2003 at the time of their promotion to the posts of Superintending Engineers and further that, even dehors the Notification dated 28.4.2003, on merit, the position of the petitioners in the Select List dated 10.5.2006 does not suffer from any such fundamental error which would require interference of the Court.

(v) W.P. (C) Nos. 5749 & 5790 of 2006

(a) The petitioners in both the above cases are presently holding the post of Chief Engineer. What has been assailed in the two writ petitions under consideration is the revised seniority list of Chief Engineers published on 4.11.2006 in modification of the earlier seniority list dated 16.2.2006. By the revised seniority list dated 4.11.2006 the respondent No. 4/6 in the writ petitions, Sri M.C. Boro, (referred hereinafter as respondent No. 6) has been

placed at Serial No. 3 (the incumbents at Serial Nos. 1 and 2 have retired) and the writ petitioner in W. P. (C)No. 5790/2006, Haresh Dutta, has been placed at serial No. 4 whereas the petitioner in W. P. (C) No. 5749/2006, Mrinal Ranjan Das, has been placed at Serial No. 5 of the seniority list. According to the petitioners they along with respondent No. 6 and some other persons were promoted to the post of Chief Engineer by the same order dated 19.6.2004 on the basis of the same Select List dated 30.1.2004. The two writ petitioners were placed at serial Nos. 3 and 4 of the said select list and the respondent No. 6 was placed at serial No. 5. They were promoted on the same day by the same order. Accordingly they were given seniority over the respondent No. 6 by the seniority list dated 16.2.2006; yet the respondent No. 6 has been made senior to the writ petitioners by the impugned revised seniority list dated 4.11.2006. Hence the writ petitions.

(b) The respondent No. 6 in the affidavit filed has contended that his promotion to the post of Superintending Engineer made on 7.5.2003; to the post of Additional Chief Engineer made on 26.12.2003 and to the post of Chief Engineer made on 19.6.2004 have been against backlog vacancies earmarked for ST (P) candidates. On account of the said fact i.e. promotion being against a backlog vacancy his seniority at serial No. 6 in the seniority list of Chief Engineers dated 16.2.2006 was wrongly assigned. The respondent No. 6, therefore, had filed a representation claiming promotion to the post of Chief Engineer on the basis of the select list dated 30.1.2004 against the first available vacancy, in accordance with the provisions of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 (hereinafter referred to as the Reservation Act). The representation of the respondent No. 6 was duly considered by the W.P.T. & B.C. Department as well as by the Personnel Department and the grievances made and the claims raised therein having been found to be genuine, seniority of Chief Engineers was revised by the impugned notification dated 4.11.2006.

(c) In the two cases under consideration the State respondents have filed separate affidavits taking a more or less similar stand. The records indicating the manner in which the decision to revise the seniority was arrived at has also been placed before the Court at the hearing.

The stand of the official respondents, as discernible from the affidavit filed and the records produced, appears to be that after the select list dated 30.1.2004 for promotion to the post of Chief Engineer was finalized, promotions could not be made because of the pendency of W.P. (C) No. 134/2004 wherein the promotions of the writ petitioners as well as the respondent No. 6 to the feeder post of Additional Chief Engineer was under challenge. One of the persons selected i.e. Sri B. M. Goswami retired on 31.1.2004 without getting the benefit of his selection i.e., promotion. The said person, after his retirement, filed a representation seeking notional promotion to the post of Chief Engineer with effect from 30.1.2004. The matter was examined by the Personnel Department

which took the view that notional promotion to Sri Goswami should be granted for a period of two days i.e. 30.1.2004 and 31.1.2004 and that such notional promotion should also be given to one Shri M. Pathak who was placed at serial No. 1 of the select list and was actually promoted by the later order dated 19.6.2004. Consequently, a notification dated 11.9.2006 was issued giving notional promotion to Shri B.M. Goswami in the rank of Chief Engineer for the period 30.1.2004 to 31.1.2004 and to Shri M. Pathak for the period 30.1.2004 to 19.6.2004 (date of his actual promotion). The matter, however, did not rest at that. For reasons that need not detain the Court, the W.P.T. & B.C. Department, thereafter, intervened in the matter and took the stand that out of the three vacancies for which the selection was held and the select list dated 30.1.2004 was prepared, one vacancy was a backlog vacancy in respect of ST (P) candidates. As the respondent No. 6, who is a ST (P) candidate, was included in the select dated 30.1.2004 the promotion of the said respondent No. 6, under the provisions of the Reservation Act, should have been made against the first available vacancy. Consequently, the view was taken by the WPT & BC Department that the respondent No. 6 was also entitled to notional promotion as in the case of Shri Goswami and Shri Pathak and therefore he would be entitled to seniority above the petitioners and others in the select list dated 30.1.2004. Consequently, the earlier seniority list dated 16.2.2006 was held to be erroneous and required revision by placing the respondent No. 6 at serial No. 3 (effectively serial No. 1) and the petitioners at serial Nos. 4 and 5 respectively. The above view was concurred by the Personnel Department whereafter the notification dated 4.11.2006 was issued.

(d) It must be noticed at this stage that though the records produced indicate that a notification dated 11.9.2006 was issued giving notional promotion to Shri Goswami and Shri Pathak with effect from the dates already mentioned, in point of fact, there is no such Notification/Govt. order giving notional promotion to the respondent No. 6. Nonetheless, the genesis of such entitlement has been contended to be Clause V of the Schedule to the Reservation Act, which mandates a backlog vacancy for a reserved category candidate to be filled up as the first vacancy of the year when an eligible candidate becomes available. The said provision, it is argued, would confer seniority to the reserved category promotee over the persons placed higher than him in the select list even though such persons are appointed against the other available vacancies by the same Govt. order/notification. This is the core issue that has to be decided in the present two cases in the light of the submissions advanced in the context of the provisions of the Reservation Act and the provisions contained in Article 16(4A) of the Constitution and the decided cases on the point to which reference will be made at a later stage of the present order.

Issue Arising for Determination

3. Having noticed the broad features of the pleadings of the respective parties in all the cases under consideration the Court has identified two principal questions

as calling for its determination in addition to individual projections contained in the several writ petitions with regard to particular selections. The first principal question is whether the notification dated 28.4.2003 laying down the norms and guidelines for holding of selection to the post of Additional Chief Engineer and above is, in any way, in conflict with the directions of this Court contained in *Ramen Ch. Kalita (supra)*. The consequential issue would be whether the said norms spelt out by the notification dated 28.4.2003 adheres to the requirements/principles of the criteria of merit-cum-seniority which is mandated by the Rules to be the applicable criteria for promotion to the posts of Additional Chief Engineer and above? On that basis the validity of the select lists dated 10.5.2006 prepared for promotion to the post of Addl. Chief Engineer and Chief Engineer is required to be adjudicated.

The second question arising for the Court's determination in the present cases can be best summarized as follows--Is a reserved category candidate, who is placed lower in merit in a select list, but who gets promoted against the first available vacancy in terms of the Reservation Act, entitled to be senior to the general category candidates who are placed above him in the same select list and who are appointed on the same date against other available vacancies?

Conclusions and Reasons therefor

4. Having identified the above two issues as the core issues in the case, the Court may defer consideration of the same to an appropriate point of time and in the first instance take up the individual projections/challenges made in the writ petitions as against the particular selections.

5. The elaborate recital of the relevant facts of each of the cases as already made would indicate that in W.P. (C) No. 134/2004, the writ petitioner, Mumtaz Uddin Ahmed, has challenged the validity of the select list dated 24.7.2002 for promotion to the post of Additional Chief Engineer from which list the said petitioner was excluded. The select list dated 19.12.2003 for promotion to the post of Additional Chief Engineer has also been assailed in the said writ petition. The select list dated 24.7.2002 being earlier in point of time to this Court's order in *Ramen Ch. Kalita (supra)* and the notification dated 28.4.2003, the selections were held pursuant to the norms evolved in the course of the meeting of the Technical Secretaries held on 14.2.2001. In accordance with the norms evolved and applied to the selection, on the basis of which the select list dated 24.7.2002 was prepared, marks were required to be given on the basis of the gradings awarded in respect of the ACRs of the preceding five years. The marks that were to be awarded had been pre-set, as for example, for an outstanding ACR, 4 marks, for very good, 3 marks etc. On the basis of the marks secured by the candidates they were required to be placed in Category-1 and Category-2. Once candidates were so categorized the arrangements of their names within the category were to be in order of their inter se seniority in the feeder post. Candidates in Category-1 were to get preference over those included in Category-2. In other words, if a junior, on the basis of marks secured by him,

gets included in Category-1 he supersedes such of his seniors who are included in Category-2.

6. A consideration of the minutes of the meeting of the Selection Board held on 18.7.2002 pursuant where to the select list dated 24.7.2002 was prepared would go to show that the petitioner Mumtaz Uddin Ahmed having been graded "very good" in the preceding five years obtained a total of 15 marks. He was, therefore, included in Category-2 as under the norms in force only those candidates who had secured more than 18 marks were to be included in Category-1. In fact, the minutes of the meeting of the Selection Committee indicate that no candidate secured 18 marks or more to be included in Category-1. As all the candidates were included in Category-2 their inter se seniority in the feeder post of Superintending Engineer governed their respective positions in the select list. The petitioner was at Seniority position No. 26 amongst the candidates whose cases were considered. As there were 11 vacancies and the size of the select list could be double the number of such vacancies, 22 candidates were included in the select list. The petitioner, therefore, could not be included.

This Court in *Ramen Ch. Kalita* (supra) has already taken the view that the norms adopted in the meeting of the Technical Secretaries held on 14.2.2001 does conform to the requirement of the principle of "merit-cum-seniority" by which criteria promotions to the post of Additional Chief Engineer are required to be made. The said norms were applied to the instant selection. The Court is, therefore, inclined to hold that the requisite norms have been applied and in view of the number of candidates who could be included in the select list, the petitioner's exclusion therefrom, does not reveal any illegality or irregularity which would require interference of this Court.

7. This would bring the Court to a consideration of the grievance of the petitioner in W.P. (C) No. 134/2004 with regard to the select list dated 19.12.2003, again, for promotion to the post of Additional Chief Engineer. The petitioner, it must be noticed, was placed at serial No. 17 of the said select list and what is therefore being ventilated is the assignment of a lower position in the select list dated 19.12.2003. First of all, the petitioner contends that his ACRs for the years 2001 and 2002 had been downgraded from "outstanding" to "very good" by the Accepting Authority and such down-grading being without any reasonable cause or basis the petitioner received less grades/marks than what he was really entitled to. The said grievance has also been raised in respect of the challenge made against the select list dated 24.7.2002 as considered in the preceding paragraphs of the present order. The grievance of the petitioner with regard to downgrading of his ACRs, which took place in the year 2001 and 2002 respectively, must be considered to be highly belated for an appropriate challenge in the writ petition filed in the year 2004. The petitioner ought to have agitated the aforesaid point, if he was so aggrieved, at an earlier point of time. The challenge to such down grading is not independent but largely collateral

being projected in the present writ petition filed primarily, against, his exclusion for the select list dated 24.7.2002 and the assignment of a lower position in the select list dated 19.12.2003.

8. The petitioner further contends that in making the selection culminating in the select list dated 19.12.2003 the norms spelt out by the notification dated 28.4.2003 were not followed and no marks were given for completed years of service i.e., seniority, as contemplated by the said notification dated 28.4.2003.

In the affidavit filed, the State has asserted that the notification dated 28.4.2003 was not followed in the selection leading to the select list dated 19.12.2003 and instead the norms spelt out in the meeting of the Technical Secretaries dated 14.2.2001 governed the selection in question. This is because in a writ proceeding instituted before this Court i.e. W.P. (C) No. 9194/2003 the notification dated 28.4.2003 was under challenge at that point of time. If that be the correct position on facts, the Court will not find any infirmity in the selection process particularly in the light of the conclusions already reached that the norms spelt out in the meeting of the Technical Secretaries held on 14.2.2001 largely conforms to the criteria of merit-cum-seniority. The challenge to the notification dated 19.12.2003, therefore, cannot be considered to be of any substance.

9. In Misc. Case No. 251/2007 the petitioner in W.P. (C) No. 134/2004 has sought a direction from the Court for his promotion to the post of Chief Engineer on the basis of a subsequent selection dated 10.5.2006 wherein the petitioner was placed at Serial No. 3. As the said selection is the subject matter of challenge in W.P. (C) No. 2603/2006, which is being disposed of by the present order, the directions prayed for in Misc. Case No. 251/2007 will, naturally, be governed by such orders that this Court may pass in the aforesaid W.P. (C) No. 2603/2006.

10. This will bring the Court to a consideration of the grievances expressed by the writ petitioner Ajoy Chandra Bordoloi in W.P. (C) No. 4602/2006. The said grievances, as already noticed in the narration of the facts of the case, are in respect of assignment of seniority to the respondent No. 4, Shri M. C. Boro, in the post of Superintending Engineer and Addl. Chief Engineer so as to entitle the said respondent No. 4 to be within the zone of consideration for promotion to the post of Addl. Chief Engineer and Chief Engineer respectively. The assignments of seniority to the respondent No. 4 in the rank of Superintending Engineer and Additional Chief Engineer took place in the years 2003 and 2004 respectively. On the basis of such seniority assigned to him in the feeder post the respondent No. 4 was considered and selected for promotion to the post of Addl. Chief Engineer and Chief Engineer on 19.12.2003 and 30.1.2004 respectively. He was promoted to the post of Addl. Chief Engineer on 26.12.2003 and to the post of Chief Engineer on 19.6.2004. The writ petitioner, however, did not approach this Court at any earlier point of time and only after the seniority of the respondent No. 4 was refixed by the impugned seniority list dated 4.11.2006 that the present

approach has been made contending that the seniority assigned is wrong and the same would give an undue advantage to the respondent No. 4 in the matter of promotion to the next higher post of Secretary. The petitioner, it must be noticed, has been promoted to the post of Chief Engineer on 23.6.2006 and the said promotion is subject to the outcome of another writ petition which is being disposed of by this order i.e., W. P. (C) No. 2603/2006. What stares at the face of the Court is the apparent delay on the part of the writ petitioner in raising his grievance with regard to the entitlement of the Respondent No. 4 to hold the post of Chief Engineer. No explanations have been offered by the petitioner as to why he had not moved the Court earlier. In such circumstances, there is no option for the Court but to take the view that the challenge made in W.P. (C) No. 4602/2006 is a highly belated challenge and on account of unexplained delay and laches the petitioner ought not to be afforded an adjudication on merits. However, realizing the above position, at the hearing, an argument has been made by Shri A.K. Bhattacharjee, learned Senior Counsel appearing for the petitioner, that in any event the petitioner having been promoted to the post of Chief Engineer on 23.6.2006 he is entitled to be included in the select list dated 4.11.2006 so that if the petitioner comes within the zone of consideration for promotion to the post of Secretary his case can also be considered. Though the State, in the affidavit filed, has pointed out that at present there are four senior incumbents holding the post of Chief Engineer who alone will come within the zone of consideration for promotion to the post of Secretary, yet, if a seniority list of Chief Engineers has been published the Court fails to understand why all such persons who are holding the post of Chief Engineer should not be included therein. The State is accordingly directed to keep in mind that seniority lists should reflect the names and position of all incumbents in the cadre including incumbents like the petitioner whose promotion may be subject to the result of any case pending before the judicial forum.

11. The next question that has to be addressed by the Court is concerning the notification dated 28.4.2003 in the light of the issues raised as noticed in the preceding part of this order. The notification dated 28.4.2003 is a sequel to the judgment and order of this Court in Ramen Ch. Kalita (supra). In Ramen Ch. Kalita (supra) the Court was considering the validity of a selection made for promotion to the post of Superintending Engineer from the feeder post of Executive Engineer. Under Rule 13(4) of the Rules in force the criteria of promotion upto the rank of Superintending Engineer is "merit and suitability with due regard to seniority" and promotions, thereafter, to the higher posts is to be made on the basis of the criteria of "merit-cum-seniority". The discussions that find place in the order of this Court in Ramen Ch. Kalita (supra); the conclusions reached and the directions issued, therefore, has to be understood as applicable to the criteria of "merit and suitability with due regard to seniority" which is the criteria that was required to be applied in making the selections that came to be challenged in the writ petition filed. In Ramen Ch. Kalita (supra) this Court took the view that when two different criteria has been prescribed by the Rule making

authority to govern promotions to two different set of posts, the two criteria spelt out by the Rules must be understood to be necessarily different, however, subtle the said difference may be. The parameters applied in making the impugned selection in Ramen Chandra Kalita (supra) were the same principles as were evolved in the meeting of the Technical Secretaries dated 14.2.2001. This Court, on due examination, found the said parameters to be more in conformity with the criteria of "merit-cum-seniority" rather than "merit and suitability with due regard to seniority". Accordingly, the selections were set aside and some observations were made by the Court as to how the correct parameters for application of the criteria of "merit and suitability with due regard to seniority" should be worked out. The State accepted the judgment of this Court in Ramen Ch. Kalita (supra) and issued the notification dated 28.4.2003 wherein detail parameters have been laid down for making of promotion by application of the criteria of "merit and suitability with due regard to seniority" and also "merit-cum-seniority". In the present case, the select lists for promotion to the post of Additional Chief Engineer and Chief Engineer being under challenge, keeping in mind the criteria prescribed by the Rules what the Court is required to see is whether the parameters spelt out by the notification dated 28.4.2003 for promotion to the said posts conforms to the principle of "merit-cum-seniority" as prescribed by the Rules in force.

12. A reading of the notification dated 28.4.2003 would go to show that what has been prescribed therein is that in the first instance the merit of the officers under consideration is to be assessed on the basis of the gradings that may be awarded on the basis of the ACRs of each officer for the preceding five years of service. The grading of outstanding is to fetch 4 marks, that of very good 3 marks and good 2 marks. On the basis of such marks/grades awarded, all officers who get 15 and more marks are to be put in Category-1 and those who secure less than 15 marks are to be put in Category-2. This is largely similar to the exercise contemplated by the norms laid down in the meeting of the Technical Secretaries dated 14.2.2001 which norms this Court has already held in Ramen Ch. Kalita (supra) to be in conformity with the principle of merit-cum-seniority. However, the notification dated 28.4.2003 does not stop there. After the categorization of the officers in the two categories on the basis of the marks secured by them, as noted above, the notification contemplates award of further marks for each completed year of service at the rate of 0.22 marks for each year subject to a maximum of 6.66 marks. The marks secured on account of seniority i.e. for the completed years of service is to be added to the marks secured on the basis of the gradings of the ACRs and on the basis of the total marks secured the final categorization of the officers into Category-A and Category-B is to be made. Those securing 21.66 marks and above are to be placed in Category-A and those securing marks less than 21.66 are to be put in Category-B. The arrangement of names of the candidates in the two categories are to follow their inter se seniority in the feeder post. Category-A is to get precedence over Category-B. The question that arises for consideration of the Court is whether the application

of the aforesaid parameters can be said to be due application of the principle of merit cum seniority.

13. The ultimate endeavour in every process of selection is to secure the best talent available for manning the higher posts in the administrative set up. Depending on the level at which promotions are required to be made, the particular needs attending the post required to be filled up and the requirement of giving due recognition to services rendered i.e., experience, different norms or criteria for promotions are laid down by the service Rules in force. "Merit and suitability with due regard to seniority" and "merit-cum-seniority" are two of such criteria that maybe prescribed by the Rules.

14. Neither of the above stated two expressions are capable of a precise meaning; nor is any such precision necessary or desirable. The two criteria must be understood to be elastic and capable of being applied or attained by different modes of application. But what must be noted is that both the aforesaid criteria are essentially of merit; they differ from the criterion of "pure merit" inasmuch as some weightage to seniority is contemplated in their application. Merit is first to be assessed, not as a entry point but on relative basis and if such merit is equal, seniority is to determine the suitability of the candidate for promotion. Otherwise merit is to prevail. The difference between the two criteria is fine and subtle but definitely discernible. The difference lies in the weightage to be given to seniority, the precise quantum of which will depend on the level of promotion at which the particular prescription is applicable. In the present case, the criterion of "merit and suitability with due regard to seniority" having been prescribed for the posts upto the level of Superintending Engineer and the criterion of "merit-cum-seniority" for promotions to the higher posts, the role of seniority in the first case must be acknowledged to be somewhat more than in the latter situation.

15. The manner of application of the detailed norms contained in the notification dated 28.4.2003 in the matter of promotions to the rank of Additional Chief Engineer and beyond has already been noticed and, therefore, need not be repeated. Shortly put, the said notification visualizes an initial categorization of the officers under consideration into Category-1 and Category-2 on the basis of their inter se merit. Officers earning 15 and more points, on the basis of their service records, are treated to be at par on merit for inclusion in Category-1 which inclusion alone ensures a berth in the final categorization i.e. Category-A and Category-B which is to be made by addition of the marks allotted against seniority. At the same time while working out individual entitlements for inclusion in the final categorization, the specific marks obtained on merit is given due recognition. A junior officer securing, say, 18 marks on merit and therefore included in Category-1 is entitled to have the said 18 marks counted for his inclusion in the final categorization. In such a situation the role of seniority gets diminished. A junior officer included in Category-1 of the initial categorization on merit with the minimum marks i.e., 15 can still make it to Category-A of the final

categorization on the basis of seniority. However, a senior officer included in Category-2 of the initial categorization cannot be included in Category-A of the final categorization even if full marks on account of seniority is awarded. Human fallibilities will always exist and perfections are rare. It is from such a standpoint that the parameters laid down by the notification dated 28.4.2003 must be judged. So judged, the said notification cannot be held to be so fundamentally opposed to the criterion of merit-cum-seniority that the judicial verdict must strike it down. The notification dated 28.4.2003 is, therefore, being held not to be contrary to the directions of this Court in *Ramen Ch. Kalita (supra)* and its application for promotion to the posts of Additional Chief Engineer and above, not opposed to the criterion of "merit-cum-seniority". It would be apposite to record herein that perhaps some upward/downward revision of the marks for inclusion in the initial categorization on merit may be required for more objective consequences in the application of either of the criteria. However, such quantitative judgments should not be the sole basis for judicial interference if otherwise the broad parameters spelt out by the notification are found to be in conformity with what is required.

16. A further grievance has been raised with regard to the notification dated 28.4.2003 which is to the effect that though under Rule 13(2) of the Rules in force the selection committee is required to be furnished with the complete service record of the officers under consideration and an independent assessment of each officer is required to be made by the selection committee for the purpose of deciding on his suitability for promotion to the higher post, yet the notification dated 28.4.2003 denudes the Selection Committee of the power of re-assessing the ACRs. It has, therefore, been argued that a high power selection committee constituted by the Rules in force has been made a virtually powerless body whose only duty would be to mechanically endorse the gradings already made by some other authority and to award marks on the said basis and that too as per pre-set norms. This cannot be the function of the high powered statutory selection committee.

17. A reading of the notification dated 28.4.2003 does indicate that an embargo has been put on the power of the selection committee to re-assess the ACRs during the selection committee meeting. This is evident from the almost penultimate paragraph of the notification which is to the following effect:

In pursuant (sic) to above judgment and Rules, the Selection Board shall examine the documents and information furnished to the appointing authority and recommend a select list of officers but shall not re-assess the ACRs during the selection meeting.

18. This Court in *Ramen Chandra Kalita (supra)* has already taken the view that a high powered selection committee constituted under the provisions of the statutory Rules in force must be acknowledged to have independent powers of assessment of the service records of the officers whose cases are before it for the purpose of determination of the suitability of such candidates for promotion.

In this regard, this Court had held that the gradings in the ACRs of the Officers under consideration, as made under the Assam Services (Confidential Rolls) Rules 1990 will not be binding on the selection committee which will have independent powers of reassessment of such ACRs and further that the ultimate conclusions of the selection committee are required to be based on an over-all consideration of the entire service record of the officers of whose cases are required to be considered. In *U.P.S.C. Vs. K. Rajaiah and Others*, , the Apex Court has clearly laid down that though normally the selection committee is to be guided by the classification adopted by the State Government, the Committee, can for good reasons, evolve its own classification different from that of the State Govt. In an earlier order of the Apex Court passed in the same case *UPSC v. K. Rajaiah and Ors.* reported in (2005) 10 SCC 23 the Apex Court has taken the view that if the Annual Confidential Reports are comprehensive enough to furnish requisite materials to judge the comparative merit of the candidates, assessments by the selection committee on the basis of the ACRs cannot be faulted with merely because in a given case the rest of the service records may not have been made available to the selection committee.

19. The fetters imposed by the notification dated 28.4.2003 on the power of the selection committee to reevaluate and reassess the ACRs during the selection committee meeting is in apparent conflict with the views expressed by this Court in *Ramen Chandra Kalita (supra)* and the law laid down by the Apex Court in *U.P.S.C. Vs. K. Rajaiah and Others*, . The notification dated 28.4.2003, therefore, to the above extent will have to be understood by the Court as unsustainable in law, requiring correction at the hands of the authority. The further question as to whether on account of the aforesaid infirmity in the notification dated 28.4.2003, its application to the selections leading to the select lists dated 10.5.2006 has in any way vitiated the said select lists has now to be answered by the Court.

20. The minutes of the selection proceedings leading to the select lists dated 10.5.2006 for promotion to the posts of Additional Chief Engineer and Chief Engineer have been placed before the Court, in original, by the official respondents. A reading of the aforesaid minutes leaves the Court satisfied that in the present cases the assessment of the selection committee leading to the preparation of the select lists in question has been on the basis of an examination of the ACRs and other relevant documents made available to the selection committee together with due consideration of the fact as to whether there is any departmental proceeding pending against any officer under consideration. The above facts, which have been recorded by the selection committee in its minutes, must lead the Court to hold that the assessment of the officers under consideration has been made not only on the basis of the ACRs but other relevant documents pertaining to the service rendered and such other facts as are relevant in the decision making process. The format of the ACRs prescribed under the Assam Services (Confidential Rolls) Rules, 1990 are comprehensive enough to warrant that the view recorded in *UPSC v. K. Rajaiah and Ors.* (2005) 10 SCC 23 would squarely apply to the present case. A mere

coincidence of agreement with regard to the gradings of the ACRs of the Officers, as made by the Selection Committee and the State Government, will not, ipso facto, make the conclusions of the selection committee an idle or formal exercise to warrant interference of the Court. In this regard, it must also be pointed out that this Court must hold that it is not an indispensable requirement for the selection committee to record its reasons for each and every conclusion reached by it. Such reasons as also the manner of evaluation made is capable of being understood by the Court to be inbuilt in the fact that the exhaustive ACRs and other connected documents were before the selection committee on the basis of which the conclusions recorded have been reached. In any event, the power of this Court under Article 226 of the Constitution will normally not be extended to an examination of the correctness of the decision of the selection committee as to the suitability of any particular candidate. The jurisdiction of this Court is primarily to oversee and ensure that all relevant factors to the decision making process had received due consideration of the selection committee.

21. There are certain other relevant aspects connected with the part of the challenge that is under consideration. The petitioners in each of the cases have been the beneficiaries of the notification dated 28.4.2003, the parameters therein having been applied while making promotion to the feeder posts from which the petitioners had been earlier promoted, details of which have been noted in the earlier part of this order. The notification dated 28.4.2003 had spelt out the criteria of promotion to the post of Additional Chief Engineer and Chief Engineer long back. The petitioners must have known that at some point of time they will be considered for promotion to the said posts; yet they did nothing to ensure a timely challenge to the notification dated 28.4.2003. In fact, they derived benefits under the said notification in so far as promotion to the feeder posts is concerned. They voluntarily "participated" in the selections which have been impugned and only on being unsuccessful or being aggrieved by their positions in the select list they have chosen to file the writ petitions in question. Such actions on the part of the petitioners cannot be appreciated by the Court. Consequently, the Court is inclined to take the view that the select lists dated 10.5.2006 for promotion to the post of Addl. Chief Engineer and Chief Engineer will not require any interference of the Court.

22. That last question involved in the writ petitions under consideration may now be taken up.

Rule 22 of the Assam Engineering (PWD) Service Rules, 1978 prescribes that the seniority of a member in a cadre appointed either by direct recruitment or by promotion shall be determined according to the order of merit in the select list prepared by the selection committee and approved by the appointing authority provided that the incumbent joins within 15 days from the date of receipt of the order of appointment. It is not the case of any of the parties before the Court that the later requirement under Rule 22 i.e. date of joining has not been met in the present case. Rule 5 of the Assam Scheduled Castes and Scheduled Tribes

(Reservation of Vacancies in Service and Posts) Rules, 1983 also enjoins upon the selection committee the duty to recommend a list of candidates found suitable for promotion in order of preference and in addition to furnish separate lists of candidates belonging to the different reserved categories. Rule 5(2) makes it clear that inter se seniority of the candidates, after their promotion, is to be determined in the order of preference mentioned in the list of suitable candidates.

23. In the select list dated 30.1.2004 for promotion to the post of Chief Engineer, the petitioners in W.P. (C) Nos. 5749/2006 and 5790/2006 were placed at Serial Nos. 3 and 4 whereas the respondent No. 6, Shri M.C. Boro, was placed at Serial No. 5. All the aforesaid officers were promoted to the post of Chief Engineer by the same order dated 19.6.2004. By the seniority list dated 16.2.2006 the petitioners in the two writ petitions were placed above the respondent No. 6 which decision has been reversed by the revised seniority list dated 4.11.2006.

24. The official respondents as well as the respondent No. 6 have sought to justify the revision of seniority in the rank of Chief Engineer by contending that under Clause-V the Schedule to the Reservation Act the admitted backlog vacancy in the post of Chief Engineer earmarked for ST (P) candidates, which was carried forward from the earlier years, had to be filled up as the first vacancy of the year as soon as a candidate from that category was available. Consequently, immediately following the selection of the respondent No. 6 by the select list dated 30.1.2004 out of the three vacancies available at that point of time the first vacancy must be understood to have been filled up by the respondent No. 6, Shri M.C. Boro. Accordingly, in view of the provision contained in Article 164A of the Constitution and the consequential Office Memorandum dated 12th of March 2002 issued by the State Government, the respondent No. 6, Shri M.C. Boro, being entitled to be appointed against the first vacancy by virtue of the Reservation Act, must be understood to have a right of consequential seniority over the other incumbents appointed by the same order dated 19.6.2004.

25. Article 16-4A does not lay down a constitutional mandate or requirement so as to understand all State actions which are not in conformity with the said provision to be constitutionally invalid. The Apex Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, (paragraphs 46, 104, 107, 112 and 123), after an elaborate consideration of the entire case law on the subject had reiterated that the provisions contained in Article 16-4A are mere enabling provisions permitting the State to make laws providing for accelerated seniority following accelerated promotion of a reserved category candidate keeping in mind the quantifiable date showing backwardness of the particular classes and inadequacy of representation of such classes in public employment, keeping in mind the maintenance of efficiency as mandated by Article 335. Article 16-4A of the Constitution having been interpreted in the above manner, naturally, the State Government's Office Memorandum dated 12th of March 2002 has to be

necessarily read and understood in the above light.

26. No law has been enacted by the State laying down that in the event a reserved category candidate is appointed against a backlog vacancy along with other candidates by the same Govt. order, such reserved category candidate will be entitled to seniority over the other candidates appointed along with him. Clause-V of the Schedule to the Reservation Act, on which much reliance has been placed, does not contain such a prescription. It merely contemplates appointment of a reserved category candidate against a backlog vacancy by treating such backlog vacancy to be the first vacancy of the year. No inference of any intent to confer seniority to the reserved category candidates in such a situation can be made by the Court, as the learned State counsels would like the Court to do, particularly when the legislative intent expressed in the service Rules in force as well as the statutory Rules i.e., Reservation Rules points to a contrary intention. The aforesaid Rules having contemplated and visualized determination of inter se seniority according to the merit position appearing in the select list, a contrary legislative intention must have found expressed manifestation in the statute book to enable the Court to take the view that a reserved category candidate appointed on the same day and by the same order but against the first deemed vacancy can be understood to be senior to the others appointed along with him. Article 16-4A being a mere enabling provision, it is open to the State to continue with a law providing for determination of seniority by application of the normal Rule i.e. merit position, in the absence of the requisite quantitative data that could justify a departure. In the present case the State having continued the existing Rules to the above effect, the Court must hold that the seniority of the Chief Engineers as determined on 16.2.2006 has been incorrectly revised by the subsequent seniority list dated 4.11.2006. Consequently, the seniority list dated 4.11.2006 is set aside and the earlier seniority list dated 16.2.2006 is directed to be restored.

27. Consequently and in the light of the foregoing discussions while WP (C) Nos. 134/2004, 4602/2006, 2603/2006, 2668/2006 and 2671/2006 are dismissed WP (C) No. 5749/2006 and 5790/2006 are allowed to the extent indicated above.