

(2000) 05 GAU CK 0034

In the Gauhati High Court

Case No : Civil Rule No's. 43, 92, 93, 94, 99, 100, 101 and 102 of 1997

Benedict Kharmalki and Others

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309
Meghalaya Public Service Commission (Limitation of Functions) Regulations, 1972 — Regulation 3
Meghalaya Soil Conservation Service Rules, 1990 — Rule 10, 10(5), 11(4), 13(4), 20
North Eastern Areas (Reorganisation) Act, 1971 — Section 64(1), 65(1)

Citation : (2000) 2 GLT 272

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : O.D.V. Ladia, P.K. Deb, S.P. Mahanta and K. Sunar, for the Appellant;
B.P. Marngear, G.S. Massar, T.T. Diengdoh, H.S. Thangkhiew, S.P. Mahanta and K. Sunar, for the Respondent

Judgement

A.K. Patnaik, J.—In this batch of writ petitions, the fixation of seniority of officers in Grade-H of the Meghalaya Soil Conservation Service has been challenged by the Petitioners.

2. The facts in Civil Rule No. 43 (SH)/97 briefly are that the Petitioner, namely, Sri Benedict Kharmalki, was initially appointed under Regulation 3(f) of the Meghalaya Public Service Commission (Limitation of Functions) Regulations, 1972, as Assistant Agriculture Engineer (Irrigation) by notification dated 21.7.1983. Pursuant to the said appointment, the Petitioner joined on 22.7.83 and his aforesaid appointment as Assistant Agriculture Engineer (Irrigation) was regularised on the recommendation of the Meghalaya Public Service Commission, (for short, "the MPSC") by notification dated 2.5.85. Thereafter, the Petitioner was appointed under Regulation 3(f) of the Meghalaya Public Service Commission (Limitation of Functions) Regulations, 1972, as Assistant Soil Conservation Officer (Civil Engineering), Watershed Management, Soil Conservation

Directorate, by notification dated 26.6.86 and the Petitioner was asked to apply to the MPSC as soon as the post was advertised by them for regularisation of his appointment. Pursuant to the said appointment he joined as Assistant Soil Conservation Officer (Civil Engg.) on 3.7.86 and he applied to the MPSC for his regularisation in the said post. The MPSC called nine (9) candidates for interview on 23.6.87, but only four (4) candidates appeared and out of the four (4) candidates, the MPSC found only the Petitioner suitable for the post of Assistant Soil Conservation Officer (Civil Engg.) and in its letter dated 3.7.87 recommended his name for appointment and pursuant to the said recommendation, the Petitioner was regularised in the post of Assistant Soil Conservation Officer (Civil Engg.) with effect from 3.7.87. By Anr. letter dated 3.7.87, the MPSC recommended Sri Daniel Syiem, Respondent Nos. 4,5,6 and 7 in Civil Rule 43(SH) 97 and the Petitioners in Civil Rule Nos. 92(SH) 97, 93(SH) 97, 94(SH) 97, 99(SH) 97, 100(SH) 97, 101(SH) 97 and 102(SH) 97 for appointment in order of merit to the posts of Assistant Soil Conservation Officer (General) and all the aforesaid persons were regularised in their respective appointments as Assistant Soil Conservation Officer (General) with effect from 3.7.87 on the basis of the said recommendation. By representation dated 12.2.90 to the Secretary to the Government of Meghalaya, Soil Conservation Department, the Petitioner requested for creation of separate cadre for Soil Conservation Engineering Wing and Mechanical Wing as he had been selected and recommended by the MPSC for appointment as Assistant Soil Conservation Officer (Civil Engg.). But by letter dated 22.2.90, the Director of Soil Conservation, Meghalaya intimated the Petitioner that he should first consult the matter with his Controlling Officer before writing to the higher authorities. Thereafter, a gradation list of gazetted officers under the Soil Conservation Deptt. as on 1.1.91 was circulated by letter dated 12.9.91 of the Deputy Secretary to the Government of Meghalaya. Soil Conservation Department and in the said gradation list, amongst the Grade-II Officers, the Petitioner, Sri Benedict Kharmalki in Civil Rule No. 43(SH) 97 was shown in serial No. 23 below the Respondents Nos. 4, 5, 6 and 7 in the said Civil Rule No. 43(SH) 97 as well as below the writ Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) of 1997. Aggrieved, the Petitioner moved this Court in Civil Rule No. 4339/91 and by order dated 10.10.91. a Division Bench of this Court disposed of the said writ petition with the observation that the Petitioner would make a representation/objection to the authorities concerned against the tentative gradation list on or before 21.10.91 and the competent authority would duly consider the said representation/objection of the Petitioner. The Petitioner then submitted a representation dated 15.10.91 against the aforesaid gradation list, but the said representation was rejected by a communication dated 2.1.92 of the Deputy Secretary to the Government of Meghalaya, Soil Conservation Department. Thereafter, a gradation list of Gazetted Officers under the Soil Conservation Department as on 1.1.94 was circulated by the Deputy Secretary to the Government of Meghalaya, Soil Conservation Department and in the said gradation list, the Petitioner in Civil

Rule No. 43(SH) 97, Sri Benedict Kharmalki was shown in the 13th position below the Respondent Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97 and the Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) of 1997 as Assistant Soil Conservation Officer in Grade-II of the service. The said Petitioner in Civil Rule No. 43(SH) 97 again filed a representation against the said gradation list of Officers in the Soil Conservation Department, Government of Meghalaya, as on 1.1.94. Thereafter, a gradation list of Officers of Meghalaya Soil Conservation service as on 1.1.96 was published by notification dated 20.2.97 and in the said gradation list, amongst the Grade-II Officers, the Petitioner in Civil Rule No. 43(SH) 97, Sri Benedict Kharmalki was placed below the Respondent Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97, but above the Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) of 97.

3. All the Petitioners in the present batch of writ petitions are aggrieved by the said fixation of seniority amongst the Grade-II Officers of the Meghalaya Soil Conservation Service as on 1.1.96 by the said notification dated 20.2.97. The Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) of 97 have prayed for quashing the gradation list notified by notification dated 20.2.97 and for directing the State-Respondents to decide the inter-se-seniority of the Officers in Grade-II afresh as per the rules and as per the gradation lists earlier published. The Petitioner in Civil Rule No. 43(SH) 97 has prayed for quashing the gradation lists of 1991, 1994 and 1997 and for direction on the Respondents to place him above all other junior officers as per merit taking into consideration his special qualification, namely, B. Tech (Agri. Engineering) and as per the age of the Petitioner and the result of the MPSC Examination. He has also prayed for a declaration that he is entitled to work in the special field of Engineering and for a direction on the Respondents to create a separate cadre for the Engineering personnel in the Soil Conservation Department. He has further prayed for declaration of Rules 4 and 5 of the Meghalaya Soil Conservation Service Rules, 1990, (for short, "the Rules, 1990"), as ultra-vires.

4. At the hearing, however, Mr. O.D.V. Ladia, learned Counsel appearing for the Petitioner in Civil Rule No. 43(SH) 97, did not make any submission challenging the vires of Rules 4 and 5 of the Rules, 1990. He, however, submitted that the Rules, 1990 did not provide for determination of inter-se-seniority of the said Petitioner in Civil Rule No. 43(SH) 97 vis-a-vis the Respondent Nos. 4, 5, 6 and 7 in the said Civil rule and vis-a-vis the Petitioners in Civil rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) 97. He explained that it would be clear from the recommendation of the MPSC in its two letters dated 3.7.97 that while the said Petitioner in Civil Rule No. 43(SH) 97 was the only person found suitable for the post of Assistant Soil Conservation Officer (Civil Engg.) and, accordingly, recommended for appointment to the said post, Sri Daniel Syiem, the Respondent Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97; and the Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH),

101(SH) and 102(SH) 97 were found suitable and were recommended by the MPSC for appointment in order of merit to the posts of Assistant Soil Conservation Officer (General). According to Mr Ladia, therefore, the Petitioner in Civil Rule 43(SH) 97 was placed first in the merit list of candidates who appeared before the MPSC for the post of Assistant Soil Conservation Officer (Civil Engg.) and Sri Daniel Syiem was placed first in the merit list of candidates recommended by the MPSC for appointment in order of merit to the posts of Assistant Soil Conservation Officer (General). These facts would show, Mr Ladia vehemently argued, that the Petitioner in Civil Rule No. 43(SH) 97, Sri Benedict Kharmalki was equal in merit to Sri Daniel Syiem and, therefore, in the gradation lists of Assistant Soil Conservation Officers, the Petitioners, Sri Benedict Kharmalki should have been placed just below Sri Daniel Syiem and above the Respondents 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97 and the Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) 97. In support of his aforesaid submission, Mr Ladia cited a decision of the Supreme Court in Chief Commissioner (Admn.) and Commissioner of Income Tax, Delhi-I and Others Vs. K.C. Sharma and Others, in which the Supreme Court upheld the procedure of preparing two select lists, one as per seniority and the other as per the date of passing examination and of selecting from both lists in ratio of 50:50 for promotion to the higher rank. He argued that in the present case also two separate seniority lists of Grade-II Officers should have been prepared: one seniority list of Assistant Soil Conservation Officer (Civil Engg.) comprising of only the Petitioner in Civil Rule No. 43(SH) 97 and the other seniority list of Assistant Soil Conservation Officer (General) comprising of Sri Daniel Syiem and the Respondent Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97 and the writ Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) 97 and thereafter promotion to the posts in Grade-I of the service should have been made at the ratio of 50:50 from the two separate seniority lists. According to Mr Ladia, had the aforesaid procedure been followed, the Petitioner in Civil Rule No. 43(SH) 97 would have been considered for promotion soon after Sri Daniel Syiem was considered for promotion to Grade-I of the Service. Alternatively, Mr Ladia contended that since the Rules, 1990, did not provide for determination of seniority between the Petitioner in Civil Rule No. 43(SH) 97 and the Respondents 4, 5, 6 and 7 in the said Civil rule and the Petitioners in other writ petitions, the Petitioner in Civil Rule 43(SH) 97 should have been placed in the seniority list taking into consideration his earlier service in the equivalent post of Assistant Agriculture Engineer (Irrigation) with effect from 22.7.83 as there was no break in service under the Government of Meghalaya from 22.7.83. Mr Ladia further submitted that before the rules, 1990, came into operation a set of Executive Instructions contained in Hand Book of General Circulars published by the Government of Assam for determination of seniority were in force and were applicable even to Government servants in the State of Meghalaya, and paragraph 10(1)(iii) of the said Hand Book stipulated that if two or more persons are bracketed in the merit list of Assam Public Service Commission, the inter-se-seniority of such persons should be determined

in accordance with the date of birth if no indication of preference was given in the merit list by the Assam Public Service Commission. He argued that the date of birth of the Petitioner in Civil Rule No. 43(SH) 97 could be taken into consideration as determinative of his seniority vis-a-vis the Respondents Nos. 4, 5, 6 and 7 in the said Civil rule and the Petitioners in other writ petitions. Mr Ladia also pointed out that after the impugned gradation list was notified by notification dated 20.2.97, the competent authority had passed an order on 10.4.97 as would be clear from Annexure-XI to the affidavit-in-opposition filed on behalf of Respondents-1, 2, and 3 in Civil Rule No. 43(SH) 97 that the representation submitted by the Petitioner, Sri Benedict Kharmalki, had been found to be justified and valid and that his seniority was required to be restored as prayed. But despite the said order passed by the authority on 10.4.97, the seniority of the said Petitioner has not been restored, and he continues to be junior to the Respondents-4, 5, 6 and 7 in Civil Rule No. 43(SH) 97.

5. Mr B.P. Marngar, learned senior Government advocate, Meghalaya, relied on the affidavit-in-opposition filed on behalf of State-Respondents and the records contained in File No. S.C.D. 40/93 of the Government of Meghalaya, Soil Conservation Department in support of his contention that the seniority of all the parties in the writ petitions has been rightly fixed by the State Government. Mr G.S. Massar, learned Counsel appearing for the private-Respondents No. 4, 5, 6 and 7 in Civil Rule No. 43(SH) 97 and the learned Counsel for the writ Petitioners in the other Civil rules vehemently opposed the Petitioner's case in Civil Rule No. 43(SH)/97. He submitted that in the representation dated 15.8.94 of the Petitioner, copy of which has been annexed to the affidavit-in-opposition filed on behalf of the State-Respondent Nos. 1,2 and 3, the Petitioner had claimed seniority on the ground that the date of joining of the Petitioner in service pursuant to his appointment under Regulation 3(f) of the MPSC (Limitation of Functions) Regulations, 1972, to the post of Assistant Soil Conservation Officer (Civil Engg.) was 3.7.86 and the said representation of the Petitioner had been allowed by the Government and it was for this reason that the Petitioner had been placed above Sri L.N. Marak, Petitioner in CR 92(SH) 97 and Sri J. Swer, Petitioner in CR 94(SH) 97 who had joined pursuant to their appointments under Regulation 3(f) of the aforesaid Regulations, 1972 on 2.3.87 and 19.9.87 respectively. Thus, the principle on the basis of which the Government has fixed the seniority of the Petitioner in Civil Rule 43(SH)/97 over the Petitioners in Civil Rules 92(SH) 97 and 94(SH)97 is that the Petitioner in Civil Rule No. 43(SH)/97 had joined earlier than the Petitioners in Civil Rules 92(SH)/97 and 94(SH)/97 as Assistant Soil Conservation Officers pursuant to their respective appointments under Regulation 3(f) of the aforesaid Regulations, 1972. But if the date of joining pursuant to appointment under Regulation 3(f) of the aforesaid Regulation 1972, was to be taken as the basis for determining the seniority amongst the Assistant Soil Conservation Officers, then the Petitioners in Civil Rules 99(SH)/97, 102(SH)/97 and 93(SH)/97 were to be placed above the Petitioner in Civil Rule 43(SH)/97 because the former had joined as Assistant Soil

Conservation Officers earlier than the latter pursuant to their respective appointments under Regulation 3(f) of the MPSC (Limitation of Functions) Regulations, 1972. He further submitted that the Petitioner in Civil Rule 101(SH)/97 was a promote to the post of Assistant Soil Conservation Officer and under the proviso to Sub-rule (4) of Rule 20 of the Rules, 1990, since the appointment of the Petitioner in Civil Rule 43(SH)/97 by way of direct recruitment and the appointment of the Petitioner in Civil Rule 101(SH)/97 by way of promotion were in the same year, the Petitioner in Civil Rule 101(SH)/97 had to be Replaced above the Petitioner in Civil Rule 43(SH)/97. In reply to the submission of Mr Ladia that the period of service of the Petitioner in Civil Rule 43(SH)/97 as Assistant Agriculture Engineer (Irrigation) should be considered, Mr Massar submitted that the said period of service in the Agriculture Department cannot be counted for the purpose of seniority in the Department of Soil Conservation and that the said period of service in the Agriculture Department can only be counted for the purpose of protection of his pay. In this context, Mr Massar referred to the provision of paragraph 10.2(iii)(b) of the Hand Book of General Circulars of the Government of Assam which lays down that the date of initial appointment under the Assam Public Service Commission (Limitation of Functions) Regulations, 1951, should be the basis of fixation of seniority where neither the Assam Public Service Commission nor the Selection Committee indicates the merit in order of preference for appointment of candidate to a post. He cited the decision of the Supreme Court in Dr. Satyabrata Dutta Choudhury Vs. State of Assam and Others, in which the Supreme Court held that the instructions of the State Government contained in the said paragraph-10 of the Hand Book of General Circulars of the Government of Assam would hold the field in the absence of Service rules for determination of seniority. According to Mr. Massar, therefore, at best the Petitioner in Civil Rule 43(SH)/97 would be entitled to seniority on the basis of his initial appointment under Regulation 3(f) of the MPSC (Limitation of Functions) Regulations, 1972, to the Post of Assistant Soil Conservation Officer (Civil Engineering) with effect from 3.7.86 and not from his initial appointment as Assistant Agriculture Engineer (Irrigation) on 22.7.83. But Mr Massar vehemently argued that the impugned gradation list notified by notification dated 20.2.97 altered the seniority position of the Petitioners in Civil Rule Nos. 92(SH), 93(SH), 94(SH), 99(SH), 100(SH), 101(SH) and 102(SH) of 1997 as notified in the earlier gradation list of 1990, 1991 and 1994 without giving any notice to the said Petitioners whose seniority was affected and was, therefore, in violation of the principles of natural justice and was arbitrary and liable to be quashed as violative of Articles 14 and 16 of the Constitution. Mr Massar further pointed out that it would be clear from the representation dated 12.2.90 of the Petitioner in Civil Rule 43(SH)/97, copy of which has been annexed to the writ petition as Annexure-"G", that the real grievance of the said Petitioner was that a separate cadre for Soil Conservation Engineering Wing and Mechanical Engineering Wing should have been created and that the grievance of the said Petitioner was not that he was senior to Respondents-4, 5, 6 and 7 in the said Civil Rule 43(SH)/97 and to the Petitioners

in the other Civil Rules. Finally, Mr. Massar submitted that it would be clear from paragraph-10 of the writ petition that the Petitioner came to know of the promotion of his juniors on 27.10.88 and yet he filed the present writ petition in 1997. According to Mr Massar, therefore, the writ petition was liable to be dismissed on the ground of delay and laches. In support of this submission, he cited the decisions of the Supreme Court in R.S. Makashi and Others Vs. I.M. Menon and Others, K.R. Mudgal and Others Vs. R.P. Singh and Others, and B.S. Bajwa and Another Vs. State of Punjab and Others,

6. I am not inclined to accept the aforesaid submission of Mr Massar that Civil Rule No. 43(SH)/97 should be dismissed on the ground of delay and laches. This is because, soon after the gradation list of Officers under the Soil Conservation Department as on 1.1.91 was circulated by letter dated 12.9.91 showing the Petitioner below the private Respondents-4, 5,6 and 7 and the Petitioners in the other Civil rules, the Petitioner in Civil Rule No. 43(SH)/97 moved this Court in Civil Rule No. 4339/91 and by order dated 10.10.91 a Division Bench of this Court disposed of the said Civil rule with the direction that the said Petitioner would make representation/objection to the authorities concerned against the gradation list on or before 21.10.91 and if the Petitioner would submit such representation/objection the competent authority would duly consider the said representation/objection. The records in File No. SCD-40/93 also indicate that the representation of the said Petitioner in Civil Rule No. 43(SH)/97 had been considered from time to time and finally some relief relating to seniority of the said Petitioner Civil Rule No. 43(SH)/97 was granted by the Government and the notification dated 20.2.97 was issued placing the said Petitioner above Sri I.N. Marak, Petitioner in Civil Rule No. 92(SH)/97. This is, therefore, not a case where the Petitioner has entirely slept over the matter relating to his seniority, and is a case where the Petitioner has been representing from time to time claiming seniority over private-Respondent Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH)/97 and over the Petitioners in the other Civil rules, and only when he failed to get the full relief in the matter relating to seniority from the Government that the said Petitioner has approached this Court in Civil Rule No. 43(SH)/97 for relief from this Court under Article 226 of the Constitution. That apart, as would be clear from the discussion here in below, the seniority of the Petitioner in Civil Rule No. 43(SH)/97 has been finalised by the Government contrary to the provisions of the Rules, 1990 seriously affecting the rights of the Petitioner. On these facts, it will be contrary to the principles of equity and justice to dismiss the writ petition on the ground of delay and laches. In R.M. Ramual Vs. State of Himachal Pradesh and Others, cited by Mr. the Supreme Court found that the employee had made representation to the authorities from time to time against the seniority list and the Government accepted the representation of the employee and directed preparation of seniority list in a particular manner, but the employee challenged the impugned order immediately after the impugned order was communicated to the employee and the Supreme Court held that there had been no unreasonable delay on the part of the employee to challenge the

impugned order. In the said decision, the Supreme Court further observed:

...Normally, when a seniority list has been made final, it should not be allowed to be challenged. But when a seniority list is prepared ignoring all just principles and also the rules framed or directions given by appropriate authority, seriously affecting any officer, it is always liable to be examined and set aside by the Court....

7. Coming now to the merits of the case of the respective parties, it is settled principle of service jurisprudence that seniority has to be determined on the basis of the statutory rules where the statutory rules provide for such determination and only in the absence of such statutory rules providing for determination of seniority, Executive Instructions will hold the field. In *Satyabrata D. Choudhury v. State of Assam* (supra) cited by Mr Massar, the Supreme Court found that there were no statutory rules for determination of seniority, but there were Executive Instructions issued by the State of Assam notified under notification No. ABP5163/1 dated 5.2.64 for fixation of inter-se-seniority of persons recruited through the Assam Public Service Commission and, therefore, held that the said instructions would hold the field in the absence of Service rules. In the present batch of cases, on the other hand, the Rules, 1990 made by the Governor in exercise of his powers under the proviso to Article 309 of the Constitution of India and in particular Sub-rule (3) of the Rule 20 thereof provides the manner in which inter-se-seniority of the members of the service in any cadre appointed on or after 21.2.72 but before the commencement of the Rules, 1990 is to be fixed. All the Petitioners in the present batch of writ petitions and the private-Respondents Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH)/97 who are members of the Meghalaya Soil Conservation service have been appointed on 3.7.87, i.e. after 21.1.72 and before the commencement of the Rules, 1990 and are, therefore, governed by the said Sub-rule (3) of Rule 20 of the Rules, 1990. The Executive Instructions contained in the Hand Book of General Circulars of the Government of Assam on which both Mr Ladia and Mr Massar placed reliance in support of their respective submissions, therefore, cannot be the basis for determination of seniority of the Petitioners in the present batch of writ petitions and the private-Respondents Nos. 4, 5, 6 and 7 in Civil Rule No. 43(SH)/97 and the seniority of the aforesaid parties has to be determined on the basis of the said Sub-rule (3) of Rule 20 of the Rules, 1990.

8. Sub-rule (3) of Rule 20 of the Rules, 1990, however, has to be interpreted in the context of the entire scheme of the Rules, 1990. Rules 3, 47(1), 20 and 22, which are relevant for the purpose of determination of inter-se-seniority of the parties in this batch of cases, are quoted hereinbelow:

3. Constitution of the service: There shall be constituted a service to be known as the Meghalaya Soil Conservation Service consisting of the following persons, namely:

(1)Members of the Assam Soil Conservation Service who were allocated to the

State of Meghalaya in accordance with the provisions of Section 65(1) of the North Eastern Area (Reorganisation) Act, 1971.

(2) Persons appointed to different posts in the service on or after 21st January, 1971 but before the commencement of these rules.

(3) Persons appointed to different posts in the service in accordance with the provisions of these rules.

4. Composition of the service,

(1) The service shall consist of such categories of posts at the Governor may from time to time determine.

(2) The service shall at the commencement of these rules consist of the following grades and posts, namely:

(i) Senior Grade- Director of Soil Conservation, Joint Director of Soil Conservation, (ii) Grade-I Divisional Soil Conservation Officers/Planning Officers/Monitoring Officers/Instructors, (iii) Grade-II - Assistant Soil Conservation Officers. (3) Each of the categories of posts in Clauses-(i), (ii) and (iii) of Sub-rule (2) shall form an independent cadre. Members of the lower cadre shall have no claim for appointment to any of the higher cadre except in accordance with the provisions made these rules.

7. Method of recruitment:

(1) Appointment to any post in the Senior Grade and Grade I shall be made by promotion from amongst the members of the service holding the next lower posts in the senior Grade, Grade I and Grade II as the case may be and possessing me experience as specified in Schedule-II and included in the select list approved under Sub-Rule (5) of Rule 10.

20. Seniority:

(1) The inter-se-seniority of die members of the service who originally belonged to and appointed by the Government of Assam before 21st January, 1972 and who were allocated to the State of Meghalaya in accordance with the provisions of Section 64(1) of the North Eastern Areas (Reorganisation) Act, 1971 in die respective cadre shall be as it was in the corresponding cadre under the Government of Assam prior to their allocation to the State of Meghalaya.

(2) Notwithstanding anything contained in Sub-rule (1), the inter-se-seniority of the members of the service appointed by the Government of Meghalaya on the recommendation of the Assam Public Service Commission during the period between 2nd April, 190 and 20th January, 1972 (both days inclusive) vis-a-vis those appointed by the Government of Assam under the same recommendation and allocated to the State of Meghalaya in the respective cadre shall be determined in the order in which their names appeared in the list prepared by the Assam Public Service Commission. Such members shall be junior to all the

members mentioned in Sub-rule (1) above in the respective cadre.

(3) The inter-se-seniority of the members of the service in any cadre appointed on or after 21st January, 1972 but before the commencement of these rules, shall be in the order in which their names appeared in the lists prepared by the Commission or the Select Lists approved by the Appointing Authority or the Commission. Such members shall be junior to all the members mentioned in Sub-rules (1) and (2) above in the respective cadres.

(4) The inter-se-seniority of the members of the service appointed to different posts after the commencement of these rules shall be in the order in which their names appear in the Merit List prepared under Sub-rule (4) of Rule 13 or in the Select List approved under Sub-rule (5) of Rule 10 or Sub-rule (4) of Rule 11:

Provided that a member of the service appointed by promotion shall be senior to a member appointed by direct recruitment, where such appointment falls in the same year.

(5) If confirmation of any member of the service is delayed on account of his failure to qualify for such confirmation, he shall lose his position in order of seniority in that cadre visa-vis such of his juniors as may be confirmed earlier than him. His original position in that particular cadre shall, however, be restored on his confirmation subsequently.

22. Gradation list: There shall be prepared and published annually an upto-date gradation list as on 1st January consisting of the names of all members of the service, cadre-wise and drawn up in order of seniority and other particulars relating to the date of birth and appointment to the service and such other details relevant to the service career shall also be indicated against each name.

It would be clear from the aforesaid Rule 3 of the Rules, 1990 that at its initial constitution, the Meghalaya Soil Conservation Service was to comprise of the members of the Assam Soil Conservation Service who were allocated to the State of Meghalaya in accordance with the provisions of Section 64(1) of the North Eastern Areas (Reorganisation) Act, 1971 and the persons appointed to different posts in the service on or after 21.1.72 but before the commencement of the Rules, 1990 that persons were to be appointed to different posts in the service in accordance with the Rules, 1990. Thus the posts or cadre under Senior Grade, Grade-II and Grade-UI in Sub-rule (2) of Rule 4 of the Rules, 1990 were to be filled up after the commencement of the Rules, 1990 and the posts or cadres of persons at the initial constitution of the Service would be different from the posts or cadres enumerated in the said Sub-rule (2) of Rule 4 of the Rules, 1990. Since the Petitioners in the present batch of writ petitions and the Respondents-4, 5, 6 and 7 in Civil Rule No. 43(SH)/97 were appointed before the commencement of the Rules, 1990, the posts or cadres to which they were appointed therefore were not the posts or cadres of Assistant Soil Conservation Officer in Grade-II of the Service mentioned in Sub-rule (2) of Rule 4 and in Schedule-land II of the Rules, 1990. In fact, the Petitioner in Civil Rule No. 43(SH)/97 was appointed to

the post of cadre of Assistant Soil Conservation Officer (Civil Engg.) and the private-Respondents Nos. 4, 5, 6 and 7 in the said Civil Rule No. 43(SH)/97 and the Petitioners in the other Civil rules were appointed to the posts or cadres of Assistant Soil Conservation Officer (General) and they continued to be in the aforesaid posts or cadres until the commencement of the rules, 1990.

9. On a reading of Rule 20 of the Rules, 1990, quoted above, it will be further clear that different principles for determination of inter-se-seniority have been laid down for three different types of members of the Service mentioned in Rule 3 of the Rules, 1990. Sub-rules (1) and (2) of Rule 20 indicate the principles for determination of inter-se-seniority of the members of the Service who were appointed by the Government of Assam before 21.1.72 and were allocated to the State of Meghalaya in accordance with Section 64(1) of the North Eastern Areas (Reorganisation) Act, 1971. Sub-rule (3) of Rule 20 provides the principle for determination of inter-se-seniority of the members of the Service in any cadre appointed on or after 21.1.72 but before the commencement of the Rules, 1990. Sub-rule (4) of Rule 20 provides for determination of inter-se-seniority of the members of the Service appointed to different posts after the commencement of the Rules, 1990. The aforesaid provisions in Rule 20 of the Rules, 1990, providing for different principles for fixation of seniority of three different types of persons who constituted the Service under Rule 3 of the Rules, 1990, make it clear that the rights of persons to seniority in the respective cadres to which they were appointed prior to the commencement of the Rules, 1990 were not to be disturbed by the Rules, 1990. Hence, if the Petitioner in Civil Rule 43(SH)/97 had been appointed on the recommendation of the MPSC to the cadre of Assistant Soil Conservation Officer (Civil Engg.) and the private Respondents-4, 5, 6 and 7 in the said Civil rule and the Petitioners in the other Civil rules were appointed on the recommendation of the MPSC to the cadre of Assistant Soil Conservation Officer (General), their respective rights to seniority on the basis of their such appointment prior to the commencement of the Rules, 1990, were not to be disturbed by the Rules, 1990.

10. The aforesaid position would be amply clear from Sub-rule (3) of Rule 20 of the Rules, 1990, which provides that the inter-se-seniority of the members of the Service "in any cadre" appointed on or after 21.1.72 but before the commencement of the Rules, 1990, shall be in the order in which their names appeared in the lists prepared by the Commission or the Select Lists approved by the Appointing Authority or the Commission. In the list prepared by the MPSC, the Petitioner in Civil Rule No. 43(SH)/97 was the only candidate selected for appointment to the post of Assistant Soil Conservation Officer (Civil Engg.) and pursuant to the said recommendation, the Petitioner was in fact appointed to the said post of Assistant Soil Conservation Officer (Civil Engg.) with effect from 3.7.87. The private-Respondent Nos. 4, 5, 6 and 7 in the said Civil Rule No. 43(SH)/97 and the Petitioners in the other Civil rules, on the other hand, were placed in a separate list prepared by the MPSC for appointment to the posts of Assistant Soil Conservation Officer (General) and on the basis of the said

recommendation of the MPSC, the Respondents-4, 5, 6 & 7 in Civil Rule No. 43(SH)/97 and the Petitioners in the other Civil rules were in fact appointed as Assistant Soil Conservation Officers (General) with effect from 3.7.97. It also appears from the records that two separate advertisements were issued for the posts of Assistant Soil Conservation Officer (Civil Engg.) and Assistant Soil Conservation Officer (General) and that the qualifications required for the said two different posts as advertised were also different. It further appears that the MPSC conducted two separate selections for the posts of Assistant Soil Conservation Officer (Civil Engg.) and Assistant Soil Conservation Officer (General) and in such separate selections conducted by the MPSC obviously there was no occasion for the MPSC to compare the merit of the Petitioner in Civil Rule No. 43(SH)/97 with the merit of the private-Respondent Nos. 4, 5, 6 & 7 in the said Civil rule and the Petitioners in the other Civil rules and, therefore, the MPSC did not indicate the order of merit as between the Petitioner in Civil Rule 43(SH)/97 and the private-Respondent No. 4, 5, 6 & 7 in the said Civil rule and the Petitioners in the other Civil rules. All these will go to show that both the MPSC and the Appointing Authority who made the appointments on the basis of the recommendation of the MPSC treated the cadre of Assistant Soil Conservation Officer (Civil Engg.) separate and distinct from the cadre of Assistant Soil Conservation Officer (General). Sub-rule (3) of Rule 20 of the Rules, 1990, provides for fixation of inter-se-seniority of the members of the Service "in any cadre" appointed on or after 21.1.72 but before the commencement of the Rules, 1990 and, therefore, the inter-se-seniority of the Petitioner appointed to the post of Assistant Soil Conservation Officer (Civil Engg.) was to be fixed in the cadre of Assistant Soil Conservation Officer (Civil Engg.) and since he was the only person recommended by the MPSC and the only person appointed by the Appointing Authority on the basis of the said recommendation of the MPSC to the post of Assistant Soil Conservation Officer (Civil Engg.) his name was to find place in the said cadre of Assistant Soil Conservation Officer (Civil Engg.) and the names of Respondents-4,5,6 & 7 in Civil Rule No. 43(SH)/97 and the Petitioners in the other Civil rules were not to find place in the said cadre of Assistant Soil Conservation Officer (Civil Engg.). Similarly, the private-Respondents 4,5,6 & 7 in civil Rule No. 43(SH)/97 and the Petitioners in the other Civil rules who were recommended by the MPSC for the posts of Assistant Soil Conservation Officer (General) were to be placed in the cadre of Assistant Soil Conservation Officer (General) in the order in which they were placed in the merit list prepared by the MPSC and as approved by the Appointing Authority.

11. A reading of Rule 22 of the Rules, 1990, quoted above, would also show that a gradation list as on 1st January of each year consisting of names of all the members of the Service was to be prepared cadre-wise and drawn up in order of seniority. In such gradation list as on 1st January of each year, the names of the members of the Service in order of seniority as determined in accordance with Rule 20 of the Rules, 1990, have to be shown. Thus, in the gradation lists as on

1.1.91, 1.1.94 and 1.1.96, the seniority of the Petitioners in the present batch of writ petitions and the Respondents No. 4,5,6 and 7 in Civil Rule 43(SH)/97 should have been shown in accordance with Sub-rule (3) of Rule 20 of the Rules, 1990. Since before the commencement of the Rules, 1990, Assistant Soil Conservation Officer (Civil Engg.) and Assistant Soil Conservation Officer (General) constituted two separate cadres, their seniority was to be determined separately in accordance with Sub-rule (3) of Rule 20 and their seniority was to be shown separately in the aforesaid gradation lists of 1991, 1994 and 1996 published under Rule 22 of the Rules, 1990.

12. Rule 7(1) of the Rules, 1990, quoted above would show that the appointment to any post in Senior Grade or Grade-I shall be made from amongst the members of the Service holding the next lower posts in Senior Grade, Grade-I and Grade-m as the case may be and possessing the experience as specified in Schedule-H and included in the select list approved under Sub-rule (5) of Rule 10. Sub-rule (3) of Rule 4 of the Rules, 1990, quoted above, states that each of the categories of posts in Clauses (i), (ii), and (iii) of Sub-rule (2) of Rule 4 shall be an independent cadre. Hence, the categories of posts under Clause (ii) of Sub-rule 2 of Rule 4, namely, Divisional Soil Conservation Officers, Planning Officers, Monitoring Officers, Instructors constitute independent cadres. Thus, promotions to Senior Grade are to be made from separate cadres of Divisional Soil Conservation Officers, Planning Officers, Monitoring Officers and Instructors in Grade-II on the basis of their seniority, merit and suitability in accordance with Rule 10 of the Rules, 1990. Similarly, officers in different cadres appointed before the commencement of the Rules, 1990, can also be considered for promotion to Grade-I on the basis of their seniority, merit and suitability in accordance with Rule 10 of the Rules, 1990.

13. In the present batch of writ petitions, the authorities have ignored the provisions of the Rules, 1990. and in particular Sub-rule (3) of Rule 20 and Rule 22 thereof and have instead prepared gradation lists in the case of the Petitioners and the private-Respondents in this batch of writ Petitioners indicating their seniority not cadre-wise but grade-wise treating them to be all Assistant Soil Conservation Officers in Grade-II of the Service as if they were appointed after commencement of the Rules, 1990 and in accordance with the Rules, 1990. This has resulted in utter confusion amongst the parties in these writ petitions including the State Govt. as to how exactly the seniority of the Petitioners & the private-Respondents in this batch of Civil rules has to be fixed. In fact the records in File No. SCD-40/93 reveal that pursuant to the representation of the Petitioner in Civil Rule 43(SH)/97, Sri Benedict Kharmalki, the Soil Conservation Department, Meghalaya, made a reference to the Personnel & AR(A) Department, Government of Meghalaya on 15.5.95 and the Personnel & AR(A) Department in its Note dated 2.6.95 referred to paragraph-9.1 of the Hand Book in General Circular of the Government of Assam which contained the instructions of the Government of Assam in ABP. 51/63/5 dated 10.8.63 which provided that

unless an indication of preference in respect of their suitability in a particular post was made by the APSC, the inter-se-seniority of those officers/candidates whose names had been bracketed in the merit list of the APSC would be determined in accordance with the date of birth, and recommended that the seniority of the said Sri Benedict Kharmalki vis-a-vis Sri Daniel Syiem be determined on the basis of their date of birth. Since the date of birth of Sri Benedict Kharmalki was 24.2.57 and the date of birth of Sri Daniel Syiem was 19.2.63, Sri Benedict Kharmalki be placed in the first position and Sri Daniel Syiem be placed in the second position. While giving the aforesaid opinion, the Personnel & AR(A) Department lost sight of the position that the instructions of the Government of Assam as contained in ABP-51/63/5 dated 10.8.63 relating to fixation of seniority stood eclipsed by the statutory rule contained in Sub-rule (3) of Rule 20 of the Rules, 1990, providing for determination of inter-se-seniority of persons who have been appointed to the Service on or after 21.1.72 and before commencement of the Rules, 1990. Moreover, Sri Benedict Kharmalki and Sri Daniel Syiem had not been bracketed in the merit list of the MPSC but had been placed in two separate merit lists of the said MPSC for appointment to two separate posts pursuant to separate selection conducted by the MPSC. Hence, the instructions of the Government of Assam in ABP-51/63/5 dated 10.8.63 which applied to only candidates whose names had been bracketed in the merit list of the Assam Public Service Commission, had no application whatsoever to the case of Sri Benedict Kharmalki vis-a-vis Sri Daniel Syiem.

14. It further appears from the aforesaid records in File No. SCD-40/93 that the Principal Secretary, Soil Conservation Department, in his notes dated 4.11.95, 16.2.96 and 7.2.76 was of the view that if the aforesaid opinion of the Personnel & AR(A) Department was given effect to Sri Benedict Kharmalki would have to be placed above twelve persons out of whom some had already been promoted and the better course would be to allow the representation of Sri Benedict Kharmalki and place him above Sri L.N. Marak and J. Swer, Petitioners in C.R. No. 92(SH)/97 and CR No. 94(SH)/97 respectively. It was on the basis of the said views of the Principal Secretary, Soil Conservation Department that the impugned notification dated 20.2.97 publishing the gradation list as on 1.1.96 was issued placing Sri Benedict Kharmalki above Sri L.N. Marak and Sri J. Swer.

Thus, the Government appears to have found a way out of the problem by fixing the seniority of Sri Benedict Kharmalki, Petitioner in Civil Rule 43(SH)/97 in the gradation list published by notification dated 20.2.97 above Sri L.N. Marak and Sri J. Swer as prayed by Sri Kharmalki in his representation dated 15.8.94. This has resulted in an anomalous situation inasmuch as while Sri L.N. Marak and Sri J. Swer who were appointed under Regulation 3(f) of the MPSC (Limitation of Functions) Regulations, 1972, after Sri Benedict Kharmalki were placed below him, the Petitioners in Civil Rule Nos. 93(SH)/97, 99(SH)/97, 100(SH)/97, 101(SH)/97 and 102(SH)/97 who were appointed before Sri Benedict Kharmalki under the said Regulation 3(f) were also placed below Sri Benedict Kharmalki.

15. As indicated above, Sub-rule (5) of Rule 10 of the Rules, 1990, provides for fixation of seniority of the Petitioners and the private-Respondents in this batch of writ petitions in their respective cadres on the basis of their placement in the merit lists recommended by the MPSC as approved by the Appointing Authority. The Petitioner in Civil Rule 43(SH)/97, Sri Benedict Kharmalki was appointed to a separate cadre of Assistant Soil Conservation Officer (Civil Engg.) and the private-Respondents, 4,5,6 & 7 in the said Civil rule and the Petitioners in the other Civil rules were appointed to the posts of Assistant Soil Conservation Officer (General) and, therefore, their seniority had to be determined into two separate cadres on the basis of their merit position in the lists recommended by the MPSC as approved by the Appointing Authority. In fact, in the Note dated 4.11.95 of the Principal Secretary, Soil Conservation Department, Meghalaya, in File No. SCD-40/93, the Principal Secretary has made an observation that if two separate advertisements for ASCO (General) and ASCO (Civil Engg.) were issued, the selected candidates should have been placed in separate cadres. Having realized this situation, the Principal Secretary, Soil Conservation Department, Meghalaya should have gone ahead and decided the question of seniority accordingly on the basis of Sub-rule (3) of Rule 20 of the Rules, 1990, as indicated above.

16. For the reasons stated above, these writ petitions are disposed of with the direction to the State-Respondent No. 1 to place the Petitioner in Civil Rule No. 43(SH)/97, Sri Benedict Kharmalki in a separate cadre of Assistant Soil Conservation Officer (Civil Engg.) on the basis of the recommendation of the MPSC in its letter dated 3.7.87 as approved by the Appointing Authority and to place the private Respondent Nos. 4, 5, 6 and 7 in the said Civil Rule No. 43 (SH) 97 and the Petitioners in Civil Rule Nos. 93(SH)/97, 93(SH)/97, 94(SH)/97, 99(SH)/97, 100(SH)/97,101(SH)/97 and 102(SH)/97 in a separate cadre of Assistant Soil Conservation Officers (General) in order of merit as recommended by the MPSC in its letter dated 3.7.87 as approved by the Appointing Authority in accordance with Sub-rule (3) of Rule 20 of the Rules, 1990. The State-Respondent No. 1 is further directed to consider the case of the Petitioner in Civil Rule No. 43(SH)/97, Sri Benedict Kharmalki for promotion to Grade-I of the Service in accordance with Rules 7 and 10 of the Rules, 1990. It is made clear that in case on such consideration, the Petitioner in Civil Rule No. 43(SH)/97, Sri Benedict Kharmalki, is found due for promotion from any retrospective date, such promotion be given to the said Petitioner retrospectively but without any retrospective financial benefits, and such promotion will not affect the promotions of any of the private-Respondents in Civil Rule No. 43(SH)/97 or the writ Petitioners in other Civil Rules already made. The aforesaid directions be complied with by the State Respondent No. 1 within a period of four months from the date of receipt of a certified copy of this judgment and order. The Petitioner in Civil Rule No. 43(SH)/97 will as soon as possible furnish a certified copy of this judgment and order to the Chief Secretary, Government of Meghalaya for compliance.

Considering however the entire facts and circumstances of the case, the parties

shall bear their respective costs.