

(2007) 11 GAU CK 0053
In the Gauhati High Court

Mohan Kachari and Others

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Police Act, 1861 — Section 12, 4

Citation : (2008) 3 GLT 128

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—In this writ petition, the petitioners are questioning the legality of the selection procedure contained in the Circular No. 3/2002 dated 26.6.2002 and the subsequent Circular No. 10/2004 dated 22.11.2004 amending the Circular dated 26.6.2002 for the promotion from the rank of Sub-Inspector of Police (SI) to the rank of Inspector in the Police Department of Meghalaya.

2. The controversy arose on the following facts and circumstances:

The petitioners numbering 40 are serving in the capacity of Sub-Inspectors of Police at different Police Stations, CID-SB organizations, etc. within the State of Meghalaya. All of them have been rendering services in various capacities for not less than fifteen years. While some of them are direct recruits, the remaining are departmental promotees. It would appear that the Police Department of Meghalaya adopted the Assam Police Manual which contains, among others, Police Act, 1861 and 1888 and the various rules framed thereunder for the purpose of discipline, promotion, departmental enquiry, etc. It is the case of the petitioners that as per the rules prescribed in the Assam Police Manual, the promotion of Sub-Inspector to the next posts of Inspector is to be made on the basis of seniority-cum-merit provided a direct recruit has put in six years of service and a departmental promotee has put in ten year of service. The petitioners belong to the batch of 1978 to 1991, and, as such, they came within

the zone of consideration for promotion to the posts of Inspectors.

According to the petitioners, it has been the consistent practice of the Police Department that the promotion to the posts of Inspectors are made on the basis of the seniority position in the feeder post of Sub-Inspector, as would be evident from all the promotion made to this post prior to 2002. That being so, contend the petitioners, such promotion is not to be made by examination or pre-selection. Due to non-availability of vacancies, they were not considered for promotion for a number of years.

3. It is the further case of the petitioners that while they were eagerly waiting for their promotion, much to their surprise and consternation, the Director General of Police, Meghalaya issued the impugned Circular No. 3/2002 superseding the rules of promotion laid down in the Assam Police Manual and replaced the same by introducing a new procedure for promotion to various ranks in the Unarmed Branch (UB) of the Meghalaya Police. The first impugned Circular provides for, among others, a cadre course for every level of promotion of non-gazetted police personnel, which shall be conducted at the PTS/Appropriate Training Institute as and when required. The Circular further provides that for the promotion from the rank of Sub-Inspector (S.I.) to the rank of Inspector i.e. Cadre Course -III, pre-selection test shall be conducted centrally by the training-in-charge (IGP/DIG/Principal, PTS), who will finalise the selection of candidates for the above cadre course, keeping in view the vacancy positions. This circular was subsequently amended by the Director General of Police, Meghalaya in the year 2004 by issuing Circular No. 10/2004 in the aftermath of the abolition of the cadre of Assistant Sub-Inspectors of Police. In terms of this Circular, following the abolition of the post of Assistant Sub-Inspector of Police, the promotion from the rank of Sub-Inspector to the rank of Inspector has been re-designated as Cadre Course-II as against the erstwhile Cadre Course-in. This Circular further provides that the selection test for Cadre Course-II shall be conducted centrally by the State Selection Board, which shall be constituted by the Director General of Police or Training-in-charge (IGP/DIG), duly authorized in this behalf by the Director General of Police, who will then finalise the selection of candidates for this course, keeping in view the vacancy position.

4. It is contended by the petitioners that the impugned circulars have created great confusion within the Police Department concerning the promotion in the Unarmed Branch from the rank of Sub-Inspector to the rank of Inspectors inasmuch as the petitioners who have put in over 15 years of service have been compelled to appear for the pre-selection test together with junior officers who have recently joined the Department. Moreover, it is submitted, the impugned circulars, which are executive instructions, cannot override the relevant rules contained in the Assam Police Manual. It is also contended by the petitioners that their right to be considered for promotion to the posts of Inspector on the basis of seniority and ability available under the Assam Police Manual cannot be set at naught by the new dispensation contained in the impugned circulars issued only

in 2002 and 2004 as that would be tantamount to destroying their vested rights. It is pointed out by the petitioners that they had to sit in the selection test as otherwise they would be asked to show cause for insubordination and that even otherwise, they would be placed in a disadvantageous position, particularly, in respect of physical endurance test vis-a-vis those who are much junior to them. It is thus submitted by the petitioners that the impugned circulars are unjust, arbitrary, illegal and discriminatory and cannot be sustained in law. When their representation to the Director General of Police did not evoke positive response, this writ petition has been filed.

5. The State-respondents through the Director General of Police (the respondent No. 2) contested the writ petition and filed their affidavit-in-opposition. The private respondents also contested the writ petition by filing their joint affidavit-in-opposition. The State-respondents maintain that the Assam Police Manual is still in force and deny that there is any provision in the Manual prescribing that promotion to the post of Inspector of Police should be on the basis of seniority. It is pointed out by the State respondents that as per Rule 39 of Part -III of Assam Police Manual, promotion of Sub-Inspector of Police to the rank of Inspector of Police shall be made as per the list to be prepared by the State Selection Board constituted by the Inspector General of Police (now Director General of Police). According to the State-respondents, the power to constitute a State Selection Board carries with it the implied power, consistent with the provisions of Assam Police Manual, to make selection through various procedures, and one of them can be an initial elimination followed by Cadre Course and final examination departmental examination. According to the answering respondents, the impugned circulars were the outcome of deliberation made by senior officers as well as District Officer in order to make the selection process uniform for all ranks and for all future promotion of Non-Gazetted Officers, and they do not in any manner supersede or override the provisions of the Assam Police Manual. It is pointed out by the State-respondents that the impugned circulars were duly publicized by broadcasting in all the Districts within 6 months of their issue, and no objection was raised against them even as late as before the last Pre-Selection Test of 2003 and that everyone including the petitioners except for the petitioner Nos. 2, 10, 22 and 26 participated in the pre-selection test without demur. On the contention of the petitioners regarding their disadvantageous position vis-a-vis their juniors, it is pointed out by the State-respondents that the outdoor tests conducted at the end of the cadre course are not tests for physical endurance of a candidate but to test his knowledge on professional skills required in the performance of duties such as proficiency in drill, firearms, field craft, tactic and map reading.

6. The State-respondents also aver in their affidavit-in-opposition that in terms of the impugned circulars, two batch of Sub-Inspectors were already promoted to the rank of Inspector after having undergone the Cadre Course in the year 2003, that the private respondent Nos. 5 to 40 have undergone and completed the Cadre Course with effect from October 26, 2004 upto December 23, 2004, while

the second batch including twelve petitioners herein have also undergone the Cadre Course with effect from December 29, 2004 to 26 February, 2005, and as per the result of the Cadre Course, thirty Sub-Inspectors including some of the petitioner (SI Nawab Thorem, SI Workmen R. Pathaw, SI Vincent N. Sangma and SI Justin J. Lyngrah) have been promoted to the rank of Inspectors on 24.3.2005. It is also pointed out by the State-respondents that out of the forty petitioners, twelve of them have undergone the 2nd Batch Cadre Course along with others with effect from December 29, 2004, while two petitioners did not undergo the course despite their selection. Some of the petitioners, however, did not appear at all in the Selection Test. Thus the State-respondents maintain that the procedures prescribed in the impugned circulars ensure selection of the best candidates in a transparent and objective manner, for which the petitioners cannot have any legitimate grievance. The writ petitioner is, therefore, liable to be dismissed with cost. Some of the private respondents also filed separate affidavit-in-opposition in which they adopt the same line of defence urged on behalf of the State-respondent, which, therefore, need not be reproduced for the sake of brevity. In the reply affidavit, the petitioners more or less reiterate their contentions in the writ petition. However, I may note their additional contentions that they came to know about the constitution of the State Selection Board only a few days before their filing of their representation on 13.10.2004 and that, being members of a disciplined force, they had to participate in the Pre-test examination as otherwise they would be exposed to disciplinary action by the Department. They also assert that as they were posted in different parts of the State, they could not promptly file joint petition to the respondent No. 2.

7. Mr. K.S. Kynjing, the learned senior counsel for the petitioners, vehemently submits that the power of the Inspector General of Police, Meghalaya (now Director General of Police, Meghalaya) u/s 12 of the Police Act, 1861 ("the Act" for short) to frame orders and rules concerning the organisation, classification and distribution of police force is not independent but is necessarily conditioned by the requirement to obtain the approval of the State Government, which is self evident from the use of the expression "subject to the approval" therein. He contends that the impugned circulars are apparently issued by the Director General of Police without obtaining the approval of the State Government. Drawing my attention to the affidavit-in-opposition of the State-respondents, the learned senior counsel points out that the contentions of the petitioners in their pleadings that the impugned circulars were not approved by the State Government, have not been rebutted therein. According to the learned senior counsel, the absence of such approval by the State Government renders the impugned circulars ultra vires the provision of Section 12 of the Act and, as such, the promotion of the private respondents on the basis of the impugned circulars is, therefore, illegal and cannot be sustained in law. Per contra, Mr. A. S. Siddique, the learned Counsel for the State-respondents, defends the impugned circulars and contends that the very fact that the State Government accepted the promotion of the private respondents made on the basis of the impugned

circulars goes to show that the impugned circular have been tacitly approved by the State Government. He reiterates the stand taken by the State-respondents in their affidavit-in-opposition. Moreover, argues the learned Counsel, Assam Police Manual is merely a compilation of executive instructions, which cannot be enforced in a court of law, and, as such, contravention of Section 12 of the Act will not have the effect of vitiating the impugned circulars or the promotion made in accordance therewith. Mr. S. Chakravarty, the learned Counsel for the private respondents, adopting similar submissions, also points out that the promotion of the private respondents cannot be quashed when the petitioners never make any prayer to that effect their writ petition. He, therefore, contends that the writ petition is defective and is not maintainable.

8. The first point for consideration in this writ petition is whether the impugned circulars contravene Section 12 of the Act? Section 12 of the Act deals with the power of Inspector General of Police (now Director General of Police) to make rules and orders which are in the following terms:

Power of Inspector General to make rules--The Inspector General of Police may, from time to time, subject to the approval of the [State Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Plainly stated, what Section 12 of the Act says is that the Director General of Police ("DGP" for short) has the power, subject to the approval of the Government, to frame orders and rules for the organization, classification and distribution of the police force. There is no dispute at the bar that the recruitment process including promotion of police personnel falls within the sweep of the term "organization" referred to in Section 12 of the Act. There is also no dispute at the bar that no express approval appears to have been given to the impugned circulars by the State Government. The term "approval" is defined by Shorter Oxford Dictionary, 4th Edn., to mean the act of approving; sanction. In *The Lord Krishna Textile Mills Vs. Its Workmen*, , the Apex Court observed that "approval", according to its dictionary meaning, suggests that what has to be approved has already taken place; it is in the nature of ratification of what has already happened or taken place. The word "approval" in contradistinction to the words "previous permission", shows that the action taken first and "approval" is to be obtained afterwards. What is of significance from the aforesaid definitions is that in the case of "approval", the action already taken is required to be approved only subsequently and not before. The term "approval"

and "permission" are also not the same as evident from the aforesaid definition given by the Apex Court. This becomes all the more clear from the observations of the Apex Court in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, which says that ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. This much is clear in the case of "approval", the action can be taken first which will hold good until and unless disapproved. But in the case of "permission", the action already taken without permission cannot be acted upon and is kept in cold freeze until the permission is granted. A full bench of this Court in Devajit v. U.G. Koring Singh v. State AIR 1971 A & N 129 has made a distinction between the word "subject to the approval" and "subject to permission" on the one hand and also between "subject to approval" and "with the approval". The full bench explained in paragraph 14 of the judgment in the following manner:

The expression "subject to the approval" in the case of an appointment in a case of this kind will mean that the appointment is valid and effective until disapproved by the District Council. The words "subject to the approval" are not the same thing as "subject to permission-", nor are they same as the words "with the approval". In case of an appointment, subject to approval of a higher authority, in absence of any express provision to the contrary, the appointment in law will be effective until it is disapproved by the higher authority. When the appointment is disapproved, the same will cease to have effect, but all actions done by the appointee prior to the approval will be valid in absence of any express provisions to the contrary. If an appointment is required to be made "with the approval" of a higher authority, the appointment is not valid nor effectual in absence of the approval. This is not so when the appointment is "subject to the approval" of a higher authority. Hence, in the absence of disapproval of the appointment by the District Council, the appointment of the petitioner u/s 4(1) of the Act made by the Executive Committee following his election is valid in law and the petitioner is entitled to function as the Lyngdoh of Mawphlang Elaka. We are happy to arrive at this decision which is also in accord with democratic notions which are embedded in the grassroots of the Hills.

9. In the instant case, the DGP, Meghalaya has exercised the power conferred upon him by Section 12 of the Act for issuing the impugned circulars. However, the impugned circulars prescribing the criteria for promotion from the rank of Sub-Inspector of Police to the rank of Inspector of Police shall have to be approved by the State Government. It is true that no express approval to the impugned circulars has been made by the State Government till date. Nevertheless, keeping in mind the dictionary meaning of the word "approval" and the definition to this word given by the Apex Court in U.P. Avas Evam Vikas Parishad case (supra), I am of the view that the definition of the expression "subject to the approval" given by this Court in U.G Koring Singh case (supra), though rendered in the context of appointment of a chief in the State of

Meghalaya, will hold good even in the matter of approval of the rules framed u/s 12 of the Act. Therefore, to implement the impugned circulars, it is not necessary for the Director General of Police to obtain the prior approval of the State Government. The impugned circulars will hold good and will be operative until they are disapproved by the State Government. It is not the case of the State-respondents that they have disapproved the impugned circulars since then. The scheme of the Act appears to show that the legislature intended to give considerable latitude to the State Police Chief to prescribe the procedure for granting promotion to subordinate police officials without ignoring merit and ability and as expeditiously as possible without interference from the officials of the State Government in undertaking the exercise of organizing, classifying and distributing the police force. In my considered view, there is thus no infirmity in acting upon the impugned circulars without the prior approval thereof by the State Government.

10. It is next contended by Mr. K.S. Kynjing, the learned senior counsel for the petitioners, that the promotion criteria prescribed in the impugned circulars are inconsistent with or are in derogation of Rule 39 of Part-III of the Assam Police Manual Vol.-I inasmuch the concept of promotion by seniority has been done away with. According to the learned senior counsel, the consistent practice of promotion from the rank of Sub-Inspector of Police to the rank of Inspector of Police on the basis of seniority cannot be set at naught by the Director General of Police by enforcing the impugned circulars. He also contends that the introduction of the system of pre-selection test involving physical endurance test in the impugned circulars is unfair and discriminatory by subjecting the petitioners, who have now put in over 15 years of service, to complete with new recruits, whose ability to undergo physical test would far surpass that of the petitioners. In other words, it is the contention of the learned Counsel that the impugned circulars in so far as they group together senior police personnel and junior police personnel for the purpose of pre-selection test amount to treating unequals as equals, which is arbitrary and violative of Art 14 of the Constitution. On the other hand, Mr. A.S. Siddique, the learned Counsel for the State-respondents, contends that Rule 39 does not indicate that promotion for the post of Inspector of Police is to be made on the basis of seniority and that, on the contrary, wide discretion is given to the DGP to formulate the criteria for promotion of Sub-Inspector of Police to the post of Inspector. He, therefore, contends that the criteria laid down in the impugned circulars do not, expressly or by implication, violate the provisions of Clause 39.

11. Since the bone of contention between the rival parties is the scope of Rule 39 of Part -HI of the Assam Police Manual, Vol.-I, it is relevant to refer to and reproduce hereunder this provision:

Promotion to the rank of Inspector Promotions to the rank of Inspectors will be made by the Inspector General of Police from the list to be prepared by a State Selection Board constituted by the Inspector General of Police from time to time

for the purpose.

Provided that a promoted Sub-Inspector who has been confirmed in the rank and has a total of 10 years continuous service in the rank on a specified date will be eligible for consideration and for the promotion to the rank of Inspector. A directly recruited Sub-Inspector will be eligible for consideration and for promotion to the rank of Inspector after completion of 6 years service after confirmation.

[Provided further that no Sub-Inspector of Police (UB) shall be promoted to the next higher rank i.e. Inspector of Police unless he has served in the Special Branch on CID for a period of not less than two years. This clause will however not be applicable to a Sub-Inspector of Police (UB) if the Department does not post him either in SB or CID].

12. At this stage, I may also give a bird's eye view of the impugned circulars. The first impugned circular envisages three types Cadre Course, namely, Cadre Course-I for the promotion from the rank of Constable/Head Constable to the rank of Assistant Sub-Inspector, Cadre Course-II for the promotion from the rank of Assistant Sub-Inspector (ASI) to the rank of Sub-Inspector (SI) and Cadre Course-III for the promotion from the rank of Sub-Inspector (SI) to the rank of Inspector. Since I am concerned with promotion to the post of Inspector, I will hereafter confine myself to the provisions relating to this post only. The circular provides that pre-selection test for Cadre Course-III shall be conducted centrally by the Training-in-Charge (IGP/DIG/Principal, PTS) who will finalise the selection of candidates for this Cadre Course, keeping in view the vacancy position. The eligibility criteria (as per Assam Police Manual, Part-III, Rule-16, 39 & 40) are direct SIs who have completed 6 years of continuous service and departmental promotee SIs who have completed ten years of continuous service in the rank of SI. It then says that candidates who qualify the pre-selection test and who are declared medically and physically fit by the Government authorised Medical Officer will be inducted into the Cadre Course. The circular further prescribes law papers and general knowledge as the subjects for pre-selection test. The circular also stipulates that on completion of the Cadre Course-III, a Departmental Promotion Board for the respective Cadre Course duly constituted by the Director General of Police, Meghalaya will conduct the final examinations including scrutinizing of ACRs in the case of Sub-Inspector for promotion to Inspector. The Board will thereafter prepare a list of successful candidates in order of merit duly signed by all members and will submit the same to the Director General of Police for his approval and consideration for promotion of successful candidates. The promotion is to be made in order of merit against existing vacancies.

13. It would appear that following the abolition of the posts of Assistant Sub-Inspector of Police, the aforesaid circular came to be amended by the second impugned circular, namely, Circular No. 10/2004 dated 22.11.2004. As per this amendment, the Cadre Course for promotion from SI to Inspector has been changed from Cadre Course-III to Cadre Course-II. The following changes are

also made in terms of this new circular:

1. The selection test for Cadre Course II is to be conducted centrally by the State Selection Board duly constituted by the DGP or Training-in-Charge (IGP/DIG), duly authorised in this behalf by the DGP, who will finalise the selection of candidates for this Cadre Course, keeping in view the vacancy position.

2. The eligibility criteria for Cadre Course II, as per Assam Police Manual Part III Rule 39 is completion of 6 years of continuous service from the date of confirmation in the case of direct Sis and completion of ten years of continuous service in the rank of Sis in respect of departmental promotees.

14. A perusal of Rule 39 of Part-III of the Assam Police Manual will show that there is no requirement to follow the principle of seniority for the promotion of Sub-Inspector to the post of Inspector. All it says is that such promotion shall have to be made from the list of Sub-Inspectors to be prepared by a State Selection Board constituted by the Inspector General of Police (now DGP) from time to time for the purpose and that a promoted Sub-Inspector, who has been confirmed, and has a total of 10 years continuous service in the rank on a specified date will be eligible for consideration and promotion to the rank of Inspector, while a directly recruited Sub-Inspector will be eligible for such promotion after completion of 6 years of service after confirmation. How the list of Sub-Inspectors is to be prepared by the DGP for their promotion to the rank of Inspectors is evidently not mentioned in Rule 39. The concept of seniority as the criterion for promotion from the rank of Sub-Inspector to the rank of Inspector is conspicuous by its absence therein. In my considered view, it is with a view to formulate the principle for preparing the list of Sub-Inspectors for promotion to Inspectors that the DGP has, consistent with Rule 39, framed the impugned circulars. There is thus no apparent contradiction or inconsistency between Rule 39 and the impugned circulars. On the question of treating unequals and equals, it is seen from the impugned circulars that the subject for outdoor/physical test are mainly confined to drill with arms, IP, riot drill/T Smoke, weapons, CI Ops/Tactic and map reading, range practice firing, which are normal features for any police force. It must be noted that physical tests/outdoor test is not the only criterion for qualifying the pre-selection test, and a number of other tests such as proficiency in law papers, case study/writing case diaries to be conducted indoor are there which carry more mark than outdoor tests. In this view of the matter, the apprehension of the petitioners that they would be in a disadvantageous position is quite misplaced. Unless a clear case of violation of Article 14 of the Constitution is made out by the petitioners, it is not within the province of this Court to substitute its opinion for the opinion of the executive authorities. Lastly, the submission of the learned Counsel for the petitioners that there has been a consistent practice of promoting Sub-Inspectors to the Inspectors on the basis of seniority is to be noted only to be summarily rejected. The Apex Court in *State of Himachal Pradesh Vs. Shri. P.D. Attri and Others*, held that when the case of the petitioners is not based on any constitutional or any other legal provisions, and

their claim is based on "accepted policy and common practice", such vague principles cannot be imported while interpreting the provisions of law.

15. It is also the common ground of the parties that the petitioners had participated in the selection process conducted on the basis of the impugned circulars. The law is now well settled that once candidates have already participated in the selection process, it is not open to them to turn around thereafter when he fails in the selection process is unfair or illegal. This was so held by the Apex Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, in the following terms:

9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative-merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a Court of appeal over the

assessment made by such an expert committee.

16. The decision of the Apex Court in *Union of India and Another Vs. N. Chandrasekharan and Another*, , is also to the same effect. The aforesaid legal position is reiterated by the Apex Court *K.H. Siraj Vs. High Court of Kerala and Others*, . The petitioners participated in the selection tests conducted by the State Selection Board in accordance with the impugned circulars without raising any objection. They were made aware of the impugned circulars before they participated in the selection. In fact, the statement of the State-respondents that the Circular No. 3/2002 was broadcast in all Districts and also within 6 months of its issue, is not denied by the petitioners in their reply affidavit. All that they contend is that being members of a disciplined force, it was obligatory on their part to participate en-masse in the pre-selection examination. Mr. K.S. Kynjing, the learned senior counsel for the petitioners, drawing my attention to Rule 3A(2) of the Meghalaya Service (Conduct) Rules, 1990 (as amended in 1997), vehemently submits that the petitioners were practically prevented by this rule from raising their objection against the impugned circulars as otherwise they would be liable to disciplinary action. In my opinion, there is no substance in this contention. In first place, it is the right of every employee to approach this Court to ventilate his legitimate grievance. Secondly, which is more important, if they were afraid of approaching this Court before they participated in the pre-selection test, what subsequently emboldened them to approach this Court after they failed in the test? Are they now liberated from the operation of Rule 3A(2) of the Meghalaya Services (Conduct) Rules, 1990 (as amended in 1997) so that they could freely file this writ petition? Having participated in the pre-selection test and also knowing fully well the new rules of selection contained in the impugned circular, they cannot now challenge the fairness or legality of the result of the pre-selection test only because such results are not "palatable" to them. The State-respondents are not barred from contesting the right to challenge recruitment process upon participation in the recruitment process. It is a remedy which stands barred. When a candidate appears at the examination without protest and is subsequently found to be not successful, the question of entertaining a petition challenging the said examination would not arise see *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, . This is not apparently the case where the condition of the promotion policy was such that the petitioners had no option except to participate in the selection process and there was hardly any time left to approach this Court before participating in the selection test.

17. For what has been stated in the foregoing, there is no merit in this writ petition, which hereby dismissed. However, on the peculiar facts of the case, I pass no order as to costs.