
P.D.Lama; Mulk Singh; M.T.B.Nair; Imdongshilu AO Vs State of Nagaland

Civil Rule Nos. 19(K) 89, 20(K) 89, 21(K) 89 and 1(K) 89

Court: Gauhati High Court

Date of Decision: March 7, 1991

Acts Referred:

Constitution of India, 1950 " Article 226, 226#Nagaland Police Service (Class I and Class II) Rules, 1977 " Rule 18, 18, 18(2), 18(2), 4(11)(c)

Citation: (1991) 2 GLJ 98

Hon'ble Judges: W.A.Shishak, J

Bench: Single Bench

Advocate: Charugopal Singh, J.P.Bhattacharjee, R.S.Bedi, Advocates appearing for Parties

Judgement

1. We have heard these four writ petitions together and we propose to dispose of them by a common judgment.

2. M.T.B. Nair is the petitioner in Civil Rule No. 21 (K) 89, Mulk Singh is the petitioner in Civil Rule No. 20 (K) 89 and P. D. Lama is the

petitioner in Civil Rule No. 19 (K.) 89.

3 Imdongshilu AO is a petitioner in Civil Rule No. 1 (K) 89. Since this petitioner has made some grievance against the other three petitioners

stated in para 2 by impleading them as respondents 5, 6 and 7, we shall advert to the case of this petitioner later.

4. First of all, we may deal with the case of the three petitioners together inasmuch as they are similarly situated and they have no grievance against

one another.

5. M.T.B. Nair was granted Emergency Commission in the Indian Army w.e.f. 2.2.1964 but he was released on 1.9.68. Mulk Singh also joined

Emergency Coir mission on 27.9.1963 and was released on 5.2.1968 So also P.D. Lama joined Emergency Commission on 6.10.1963 and was

released on 1.6.1968. When they were released from the Emergency Services Commission in the Army, they were holding the rank of Acting

Captain. In 1967, the Govt. of India, Ministry of Home Affairs framed Released Emergency Commissioned Officers and Short Commissioned

Officers (Reservation of Vacancies) Rules 1967, with the express intention of rehabilitation of Emergency Commissioned Officers and by a

memorandum No. POL.4/51/67 dated 21.9.1968, the Chief Secretary to the Govt. of Nagaland, Kohima, directed that the benefits and privileges

as sanctioned to the Emergency Commissioned Officers and Short Commissioned Officers by the Govt. of India dated 4.10.1967 in respect of

employment in the Central Services shall also be extended to such officers in respect of employment in the Nagaland State Service. The three

petitioners were offered appointment on contract basis by the Home Department, Police Branch of the Govt. of Nagaland to temporary posts for a

period of 2 years on 11.9.1968. Accordingly, M.T.B. Nair joined Nagaland Service as Deputy Superintendent of Police w.e.f. 2.11.1968, Mulk

Singh on 26.2.1968 and P.D. Lama on 9.11.1969. Thereafter the petitioners applied for permanent absorption in the Nagaland Police and the

applications so made by the petitioners were duly recommended for the said purpose but the prayer was not complied with and instead the

services of the petitioners continued on contract basis and the period of employment on contract was extended from time to time. At this stage it

may be stated that although the petitioners were serving on contract basis, the Govt. of Nagaland was pleased to allow the petitioners to cross the

Efficiency Bar and also they were given all the benefits and privileges of service as granted to regular Government servant.

6. The representations of the petitioners for regular absorption against regular vacancies were recommended by the Inspector General of Police,

Nagaland to the Special Secretary, Home Department, Govt. of Nagaland. The reason for recommendation as given by the Inspector General of

Police was that there were a number of vacancies in the officer cadre and it was obvious that this could continue for many more years. The

Inspector General of Police was also of the view that there was specific provision in the Police Service Rules to absorb such officers against

regular vacancies. The Inspector General of Police had further stated that these three petitioners had rendered significant services in raising the

police force in the State of Nagaland. The said recommendation was made on 18.7.79.

7. The Govt. of Nagaland by a notification dated 31.1.1981 was pleased to absorb the petitioners in the regular Nagaland Police Service on the

recommendation of Nagaland Public Service Commission. Thereafter the Govt. of Nagaland was pleased to issue an office memorandum after

considering the representation made by the petitioners and it was intimated therein that the petitioners would be given benefit of completed period

of Military Commissioned Service in the matter of pay fixation and seniority in the cadre of Deputy Superintendent of Police (Class II). As a result

M.T.B. Nair's seniority was to be counted w.e.f. 2.7.1976, Mulk Singh's seniority was to be counted w.e.f. 23.9.1976 and that of P.D. Lama

was to be counted w.e.f. 6.6. 1976. Accordingly the Govt. of Nagaland informed the Accountant General in regard to the fixation of pay in respect

of the petitioners by a letter dated 23.2.1983. Then came the seniority list. By an office memorandum dated 29.5.1984, the Govt. of Nagaland

published a tentative seniority list of Deputy Superintendent of Police/Assistant Commandants of Nagaland Police Service as on 1.4.1984 and

complaints/objections were called for within 60 days from the date of issue of the said memorandum. This seniority list was prepared in

accordance with the Rules in force and the names of the promotees and direct recruits were arranged in order of the select list and the merit list

draw up by the Departmental Promotion Committee and the Nagaland Public Service Commission. In the said list, the names of the 3 petitioners

were on the top, one after the other. Since the seniority list was prepared after inviting objection/complaints it became final as per the seniority list

dated 29.5.1984, as far as these three petitioners were concerned. It may be stated that decision to give benefit of completed period of Military

Commissioned Service for the purpose of pay fixation and seniority in the cadre of Deputy Superintendent of police was taken on 20.11.82 and

the same was confirmed in 1983 and thereafter final seniority list of the petitioners was published vide memorandum dated 28.5.84.

8. The Government of Nagaland was also pleased to condone the break in services of the petitioners on then being released from the Emergency

Commission for the purpose of pension. A notification in this regard was issued on 9.11.1983. After long and satisfactory completion of 15 years

continuous service in the grade of Deputy Superintendent of Police the Government of Nagaland was also pleased to release the selection grade

scale of pay to the petitioners by a notification dated 8.1.1985. So far so good.

9. The grievance of the petitioners begins here. By an order dated 3. 4. 1985, the Government cancelled the note below the tentative seniority list

of Deputy Superintendent of Police/Asstt. Commandants of the Nagaland Police Service issued under memorandum dated 29.5.1984. The said

note in regard to the fact that seniority in respect of the petitioners would be final was sought to be taken away by this order dated 3.4.1985, and

this was done without any reference to them and without giving them any notice and therefore this order, according to them, is arbitrary. Again,

subsequent to the aforesaid order dated 3.4.85 the Government of Nagaland issued a final seniority list of Deputy Superintendent of Police/Asstt.

Commandants of Nagaland Police Service by an office memorandum dated 12.4.1985 wherein it was stated that the petitioners were not

appointed in terms of Rules of 1967, but they were appointed as direct recruits in Nagaland Police Service(Class II) through a Special Selection

Committee and that such provisions contained in Rule 6(l)(p) of the aforesaid Rules of 1967 for giving weightage to military service in matter of

seniority was not applicable in the petitioners cases. Because of this seniority list the petitioners were made junior to the respondents 3 to 9

whereas in fact these respondents 3 to 9 are junior to the petitioners.

10. The petitioners represented to the Government against the cancellation of the note below the tentative seniority under memorandum dated

29.5.1984 and also against the seniority list dated 12.4.1985 but to no effect. Hence the petitioners have approached this Court under Article 226

of the Constitution of India assailing the impugned order of cancellation of the note below the tentative seniority list and also the subsequent

seniority list prepared by the Government on 12.4.1985 without giving the petitioners the opportunity of being heard and without giving them any

notice before the impugned seniority list was published.

11. Shri Charugopal Singh learned counsel appearing for the petitioners submits that the appointments of the petitioners were against vacancies and

in this view he submits that there is no difference whether or not the posts held by them were reserved. He submits that the appointments of the

petitioners were by way of rehabilitation. He has further submitted that the amendment which was effected in 1981 shall not affect the petitioners

inasmuch as the petitioners were not recruited under Rule 5(1) of 1977. We see that amendment to the 1977 Rules came into force on 3.1.1981.

We also see that the order of absorption at Annexure 4 was passed on 31.1.1981. The learned counsel has submitted that the Government cannot

go back on the order of absorption of 31.1.1981. The learned counsel has also further submitted that Government has acted on paragraph 4 of

1967 notification. Subsequent actions and order of the Government in regard to the conditions of services of the petitioners were made to be

applicable to the petitioners consequent to the policy of the Government to absorb petitioners in the regular cadre of service in Nagaland. It is also

submitted by the learned counsel that one Lukheyi Sema who was also at one time in the Army came to be appointed as Deputy Superintendent of

Police in Nagaland Police Department and the said Lukheyi Sema was given the benefit of his service in the Army and therefore there is no

reasonable ground to deny the same benefit to the petitioners who were similarly situated. In view of this submission the counsel submits that the

treatment meted out to the petitioners is discriminatory.

12. Mr. J.P. Bhattacharjee learned Advocate General appearing for the State of Nagaland submits that the impugned order of seniority list was

prepared under Nagaland Police Service (Class I and Class II) Rules, 1977. He submits that one comes to the service only by means of these

Rules and not outside of it. It is stated that contract service in respect of the petitioners was extended from time to time and had continued till the

petitioners were finally absorbed on regular basis w.e.f. 31.1.1981. According to the learned counsel since these 3 petitioners would not come

within 1977 Rules, amendment was duly effected bringing them within such subsequent Rules and the amendment came into force w.e.f.

31.1.1981. He submits that the petitioners were on contract service before the order of absorption and as such they were not appointed under the

1977 Rules.

However, it is the submission of the learned counsel that benefits which were accrued to the petitioners within the purview of the 1977 Rules which

had been given to the petitioners were not withdrawn. According to the learned Advocate General, the office memorandum dated 20.11.1982

(Annexure 5) was obviously a mistake on the part of the State Government. In other words the learned Advocate General states that the view

taken in the said memorandum was obviously a mistaken one. It is further submitted that note below Annexure 7 which makes the seniority list

dated 29.5.84 final in respect of the petitioners was cancelled by order dated 3.4. 1985 (Annexure 11) only to give opportunity to the petitioners

for making representations. In this view he submits that the seniority list of 29.5.1984 was not a final one. The submission of the learned counsel

that mistaken view taken by the Government cannot proceed on the ground that when the order of absorption was made, 1967 Rules were death

and gone. In regard to the submission made on behalf of the petitioners that the same treatment that was given to one Lukheyi Sema should also be

extended to the petitioners the learned Advocate General submits that the cases of the petitioners and that of Lukheyi Sema are on different

footing. He submits that Shri Lukheyi Sema joined as Deputy Superintendent of Police on 21.4.1967 during the currency of 1967 Rules and not on

contract service. Also it is his submission that Shri Lukheyi Sema cannot be dragged into the controversy in this writ petition since said Lukheyi

Sema is not a party in this case. At the same time it has been submitted that assuming a. wrong decision was taken in favour of one, no benefit can

be given to another of such a wrong decision.

13. During the course of argument certain Rules of Nagaland Police Service (Class I and Class II) Rules 1977 have been relied upon by the

learned counsel appearing for all the parties. Relevant Rules are 5 and 18 of the said Rules. They are extracted : [Rules 5 and 9 not printed]

14. Subsequent amendment to 1977 Rules which was brought out by notification dated 3.1.1981 runs as under : [Notification not printed]

In order to understand the notification of the Government and also the various steps taken by the Government to carry the intention of the

Government into effect we may now look into them. First of all we may examine office memorandum dated 21.9.68 by which Government of

Nagaland decided to extend the benefits and privileges to the petitioners who were Emergency Commissioned Officers. We may look at the said

Office memorandum by extracting it :

Memorandum No. POL4/51/67 : The Government after careful consideration have decided that the benefits and privileges as sanctioned to the

Emergency Commissioned Officers and Short Service Commissioned Officers by the Government of India, vide Government of India, Ministry of

Home Affairs, New Delhi letter No. 31/1/67ESTT (B) dated 4. 10. 67 (copy enclosed) in respect of employment in Central Services shall also be

extended to the Emergency Commissioned Officers and Short Service Commissioned Officers in respect of employment in Nagaland State

Service.

It appears to us that subsequent actions which we find in various Government documents in the form of letter, notification, office memorandum etc.

directly emanate from the office memorandum dated 21. 9. 68 by which the Government decided to give benefits and privileges to the Emergency

Commissioned Officers. In this view it would be most convenient for us to extract some of the relevant documents. The first is a letter written to the

Special Secretary, Home Department by the then Inspector General of Police. The letter is dated 18.7.79 which runs as under : [Letter not

printed]

The second is a notification dated 31.1.81 by which the petitioners were absorbed to the regular cadre, Nagaland Police Service (ClassII):

[Notification not printed]

The third is office memorandum dated 20.11.82: [Memorandum not printed]

The fourth is a letter written to the Accountant General, Nagaland Kohima, informing him that the Government of Nagaland had given the benefit of

Military Commissioned Service for fixation of pay and seniority in the cadre of Deputy Superintendent of Police of Nagaland Police Service {Class

II Gazetted) : [Letter not printed]

The fifth was office memorandum dated 3.11.83 by which the office memorandum dated 20.11.82 was confirmed : [Memorandum not printed]

Thereafter, the sixth one is another office memorandum dated 29. 5. 84 which is tentative seniority list in respect of other officers except the 3

petitioners whose seniority was made final by a note below the seniority list : [Memorandum not printed]

Below Note : The benefit of completed period of commissioned service in the Indian Army is given to the officers at serial Nos. 1 to 3 for the

purpose of fixation of seniority in accordance with Govt. of India's letter No BI/1/61 Estt/13/82 (Vol. 1) dated 20.11.82 Seniority from serial one,

two and three is final and no further representation will be entertained.

In the said seniority list the petitioners are at serials 1. 2 and 3.

Then came the condonation of break in the services of the petitioners. By notification dated 9. 11. 83 : [Notification not printed]

Notification dated 8. 1. 85 is in regard to the release of the petitioners to the selection grade scale of pay consequent upon completion of

continuous service of 15 years in the grade of Deputy Superintendent of Police. [Notification not printed]

Then came the two impugned orders dated 3. 4. 85 and 12. 4. 85 : ""Order : ""No.POLI/ESTT/12/82 (Vol.IA) : The note below the tentative

seniority list of Deputy Superintendents of Police/Asstt. Commandants of the Nagaland Police Service issued under this Department's office

memorandum of even number dated 29th May, 84 is hereby cancelled.

Office Memorandum :

Sub : Final Seniority list of Deputy Superintendents of Police/Assistant Commandants of the Nagaland Police Service

The undersigned is directed to refer to this Deptt's O.M. of even number dated 29th May, 1984 and to say that in course of scrutiny of the

representations received against the tentative seniority list circulated under the aforesaid O. M it has come to the notice of the Govt. that S/Shri M.

T. B. Nair, Mulk Singh and P. D. Lama were not appointed in terms of the provisions contained in the released Emergency Commissioned

Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967 but were appointed in Nagaland Police Service (Class

II) as direct recruits through a special Selection Committee. The provisions contained in Rule 6 (1) (b) of the aforesaid Rules, 1967 for giving

weightage of Military Service in matter of seniority are, therefore, not applicable in their cases.

2. Keeping the above position in view and the decision of the Government that the seniority of persons whose appointment on contract/ deputation

is followed by regularisation should be counted from the date of decision to absorb in regular service and other relevant factors, the inter se

seniority of all the persons shown in the tentative Seniority List, except those who have since left the service and those who are not qualified for

appointment to regular cadre of Deputy Supdt. of Police in terms of proviso to Rule 4 (11) (c) of the Nagaland Police Service Rules, 1977 has

been refixed. A final seniority list of Deputy Superintendents of Police as on 1st January, 1985 is accordingly circulated herewith for information

and guidance of all the members of the service".

In the light of all the relevant documents stated above, Mr. Bhattacharjee learned Advocate General of Nagaland submits that the Government is

free to alter its policy or its decision in administrative matters. While making this submission the learned counsel has relied upon (1980) 3 SCC

402, R. R. Verma vs. Union of India. We have perused the judgments and we are unable to accept this submission inasmuch as if we accept this

view the rights and interests of the petitioners will be seriously affected. We say so because on perusal of various Government orders we are of

the view that Government has really acted on the provision of 1967 Rules notwithstanding whether or not they were in force when the petitioners

were ultimately absorbed to the regular service of Deputy Superintendent of Police. After serving so many years the petitioners cannot be made to

suffer towards the end of their service career. We must state here that the instrumentalities of the State must discharge their duties and functions in

a fair and just manner. This is the concept of the rule of law in a welfare society like India. We must see the public good and new problems call for

new solutions. To arrive at a just decision should be the aim of every authority. We may further state here that, on perusal of Government orders

we are convinced that in fact the Government is the prime mover in all the actions taken in regard to the service conditions of the petitioners and in

this view, benefits which have been extended to the petitioners who have enjoyed such benefits cannot be deprived of the same subsequently by

Governmental action, for to allow such Governmental action would seriously jeopardise the interests of the petitioners.

15. In regard to the submission made on behalf of the Government in respect of one Lukheyi Sema, although Government has taken the view that

said Lukheyi Sema had been appointed during the operation of 1967 Rules, whereas according to the Government when the petitioners were

absorbed, 1967 Rules had expired and as such the petitioners cannot claim benefit under the said Rules, we are of the view that it is equitable to

give similar benefit to the petitioners as well for the simple reason that after all, the petitioners had served in the Army and they were appointed as

Deputy Superintendent of Police by the Government of Nagaland in 1968 and as evident from the document the petitioners had given satisfactory

service to the Government of Nagaland even if 1967 Rules had expired at the time of their absorption.

16. On close scrutiny of office memorandum dated 20.11.82 and office memorandum dated 3rd November 1983 we have no hesitation to come

to the conclusion that seniority of the petitioners have been determined finally by memorandum dated 29.5.84.

In view of our finding in this regard, order dated 3.4.85 by which memorandum dated 29.5.84 is sought to be cancelled and another order dated

12th April 1985 by which seniority list was sought to be published should be of no consequence in so far as the petitioners are concerned

inasmuch as their seniority had been determined after all objections had been examined in terms of office memorandum dated 3.11.83. At the same

time no opportunity was given to the petitioners before the said 2 orders namely, order dated 3.4.82 and 12.4.85 were passed. This was done in

violation of the principles of natural justice. In this view of the matter the impugned orders dated 3.4.85 and 12.4.85 shall have no effect as far as

the petitioners are concerned. We make it clear that office memorandum dated 29.5.84 shall stand in respect of seniority of the petitioners.

In the result order dated 3.4.85 and also order dated 12.4.85 in so far as they concern the petitioners are hereby set aside.

17. Let us now hear what Shri Imdongshilu Ao, petitioner in Civil Rule 1 (K) 89 has got to say in respect of the grievances taken by him in this

petition regarding seniority of respondents 5 to 13. The petitioner has impugned the seniority list dated 12.4.85 on the ground that respondents 5 to

13 have been wrongly shown above him and as such the petitioner contends that the impugned seniority list apparently suffers from the vices of

discrimination on the ground that the benefit of the date of the decision was given to the respondents 5 to 13 and that the petitioner was not given

such benefit.

18. The petitioner joined Nagaland Police Service as SubInspector in 1963. He was promoted to the post of inspector on 15.6.1972 and his last

promotion was to the post of Deputy Superintendent of Police on 23.3.1981.

19. The main contention of the petitioner is that the petitioner and the respondents 5 to 13 were promoted in the same year i.e. in 1981 and as

such in terms of Rules 5 and 18 of the Nagaland Police Service (Class 1 and Class II) Rules, 1977 the petitioner should rank above the

respondents inasmuch as he was a promotee and not a direct recruit. We have extracted the above rules earlier and we may not overburden

ourselves to reproduce the entire rule again. However, for convenience we may extract Rule 18 (2) herein below :

Members of the service recruited in a year under subrule (2) of Rule 5 shall be senior to members recruited in the same year and in the same

batch under subrule (1) of Rule 5.

It would therefore, be necessary for us to examine the orders of promotion in respect of the petitioner as well as the respondents. We see that

respondents 5 to 13 were appointed in the post of Deputy Superintendent of Police with effect from 31.1.1981. The petitioner's appointment in

the same grade was on 23.3.81. On the recommendation of the Nagaland Public Service Commission the respondents 5 to 13 were absorbed to

the regular Nagaland Police Service (Class II) in the post of Deputy Superintendent of Police with effect from 31.1.1981. It may be stated here that

decision to absorb the respondents had been taken on 10.2.80, whereas petitioner's case for promotion to the post of Deputy Superintendent of

Police was considered only on 18.2.81.

20. By notification dated 23.3.81, the petitioner was promoted temporarily to the post of Deputy Superintendent of Police subject to regularisation

by the Departmental Promotion Committee. The said order of promotion is as follows : [Order not printed]

The last paragraph of the promotion order states that the promotion of the petitioner is subject to the condition that his performance should be

watched for 6 months from the date of promotion and a special report should be submitted by the Inspector General of Police for his further

continuance in the higher post.

21. By another notification dated 11th December 1981, the temporary appointment of the petitioner to the post of Deputy Superintendent of

Police was extended until further orders. The said order is extracted below : [Order not printed]

It has not been brought to our notice whether there was a special report from the Inspector General of Police for further continuance of the

petitioner in the post of Deputy Superintendent of Police. We say this because the said notification dated 11th December 1981 speaks of

extension of the service of the petitioner in the post of Deputy Superintendent of Police.

22. We may also state here that, during the course of hearing we had insisted on the production of order of regularisation of the petitioner in the

post of Deputy Superintendent of Police. However, the learned counsel appearing for the petitioner submitted time and again that since finally

petitioner's promotion was effective from 23.3.81 and since respondents 5 to 13 were absorbed in the post of Deputy Superintendent of Police on

regular basis with effect from 31.1.81, in terms of Rule 18 clause (2) the petitioner should rank above the respondents in the seniority list inasmuch

as they were promoted in the same year.

We have carefully examined the order of temporary promotion of the petitioner and we are of the view that ultimately all must go through Public

Service Commission in terms of Rules 7 and 8 of the said Rules. As stated earlier we have no material to show as to when the service of the

petitioner was regularised by Departmental Promotion Committee on the recommendation of Nagaland Public Service Commission. On perusal of

orders dated 23.3.81 and, 11.12.81 we are of the view that the orders of promotion of the petitioner was conditional and as such unless it is

satisfactorily shown that these conditions were fulfilled by the petitioner we would presume that the Government would have every right to review

the order of temporary promotion. As stated earlier we do not have any material which will go to show that the performance of the petitioner was

satisfactory and that in view of his satisfactory performance the petitioner should continue in the post of Deputy Superintendent of Police.

In the light of the materials placed before us, we are of the view that the position of the petitioner is certainly on a different footing. In this view we

cannot accept the contention of the petitioner that the petitioner and the respondents 5 to 13 were of the same year and the same batch and that

they were similarly situated.

23. Although arguments have been advanced before us as to whether Rule 5 of the aforesaid Rules be said to lay down fixed proportion of quota

and although we have heard the parties at length on this point, in view of what we have held above, we are not inclined to go into details about this

matter. However, on the face of it Rule 5 clause (3) does not really prescribe fixed quota for each of the two categories, direct recruits and

promotees. The rule insists that not less than 50% of the total number of vacancies which occur in a calendar year shall be filled by direct recruits

and that the number of vacancies to be filled in a calendar year by promotion shall not exceed 50%. In other words, the rule lays down only upper

limit and lower limit. This will mean that in a given calendar year more than 50% of the total number of vacancies may be filled by direct

recruitment. Also in a given calendar year the number of vacancies to be filled by promotion may be less than 50%. Therefore, we see an amount

of discretion left to the authority concerned to decide depending upon the exigencies in a particular calendar year in regard to the percentage of

vacancies to be filled in a particular year by direct recruitment and by promotion. In view of this we are unable to accept the submission of the

learned counsel for the petitioner that the quota fixed by the Rule has been violated in the present case. In view of this the two cases namely;

(1985) 2 SLR 312, Pran Krishna Goswami v. State of West Bengal and (1990) 2 SCC 715, Direct recruits ClassII Engineering Officers

Association vs. State of Maharashtra, which have been relied upon in the course of hearing by the counsel for the petitioner do not come to the

rescue of the petitioner.

In view of our findings above we allow the petitions, namely, Civil Rule 19 (K) 89, Civil Rule 20 (K) 89 and Civil Rule 21 (K) of 89 and we make

the Rule absolute. However, Civil Rule 1 (K) 89 filed by Shri Imdongshilu is dismissed and the Rule is discharged. We make no order as to costs.