

IN THE HIGH COURT OF SIKKIM  
GANGTOK

Date of Decision : 3<sup>rd</sup> July 2001.

WRIT PETITION NO. 63 OF 2000

Shri Bhupendra Sharma  
Presently posted as Administrative Officer  
Tashi Namgyal Academy (on deputation)  
Gangtok. .... Petitioner

Versus

1. The State of Sikkim  
Through the Chief Secretary  
Government of Sikkim  
Tashiling Secretariat  
Gangtok.
2. The Secretary  
Department of Personal and  
Administrative Reforms and Training  
Government of Sikkim  
Tashiling Secretariat  
Gangtok, Sikkim.
3. Shri L.M. Pradhan  
Deputy Secretary  
Sikkim Nationalised Transport  
Government of Sikkim  
Gangtok.
4. Shri T.N. Kazi  
Additional District Collector  
Office of the District Collectorate, Mangan  
Land Revenue Department  
Government of Sikkim.
5. Smt. Tenzing Dolkar  
Deputy Secretary  
Science & Technology Department  
Government of Sikkim  
Gangtok.



6. Smt. Tshering Doma  
Deputy Secretary  
Law Department  
Government of Sikkim  
Tashiling Secretariat, Gangtok  
Sikkim.
7. Shri Alfred Karthak  
Deputy Secretary to the HCM  
Government of Sikkim  
Gangtok. ... Respondents.

## WRIT PETITION NO. 64 OF 2000

Shri Prakash Rai  
Presently posted as Bazar Officer  
Urban Development & Housing Department  
Government of Sikkim  
Gangtok. ... Petitioner

Versus

1. The State of Sikkim  
Through the Chief Secretary  
Government of Sikkim  
Tashiling Secretariat  
Gangtok.
2. The Secretary  
Department of Personal and  
Administrative Reforms and Training  
Government of Sikkim  
Tashiling Secretariat  
Gangtok, Sikkim.
3. Shri T.N. Kazi  
Additional District Collector  
Office of the District Collectorate, Mangan  
Land Revenue Department  
Government of Sikkim.
4. Smt. Tenzing Dolkar  
Deputy Secretary  
Science & Technology Department  
Government of Sikkim  
Gangtok.



5. Smt. Tshering Doma  
Deputy Secretary  
Ecclesiastical Department  
Government of Sikkim  
Tashiling Secretariat, Gangtok  
Sikkim.

6. Shri Alfred Karthak  
Deputy Secretary to the HCM  
Government of Sikkim  
Gangtok.

... Respondents.

WRIT PETITION NO. 65 OF 2000

Shri Pradeep Kumar Rai  
Presently Posted as Under Secretary  
Social Welfare Department  
Government of Sikkim  
Gangtok.

Versus

1. The State of Sikkim  
Through the Chief Secretary  
Government of Sikkim  
Tashiling Secretariat  
Gangtok.

2. The Secretary  
Department of Personal and  
Administrative Reforms and Training  
Government of Sikkim  
Tashiling Secretariat  
Gangtok, Sikkim.

3. Shri T.N. Kazi  
Additional District Collector  
Office of the District Collectorate, Mangan  
Land Revenue Department  
Government of Sikkim.

4. Smt. Tenzing Dolkar  
Deputy Secretary  
Science & Technology Department  
Government of Sikkim  
Gangtok.



5. Smt. Tshering Doma  
Deputy Secretary  
Ecclesiastical Department  
Government of Sikkim  
Tashiling Secretariat, Gangtok  
Sikkim.

6. Shri Alfred Karthak  
Deputy Secretary to the HCM  
Government of Sikkim  
Gangtok.

... Respondents.

Coram: Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice  
Hon'ble Mr. Justice Anup Deb, Judge.

Present: Mr. B. Sharma, Advocate for the petitioners.

Mr. N.B. Khatiwada, Additional Advocate General  
with Mr. J.B. Pradhan, Government Advocate for  
the respondent Nos. 1 and 2.

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## J U D G M E N T

### DEB. J

These three writ petitions involving the questions of fixation of seniority and non-promotion of the petitioners are being disposed of by this common judgment.

2. Bhupendra Sharma, petitioner in writ petition No. 63 of 2000 was promoted to the post of Office Superintendent with effect from 28<sup>th</sup> May 1979 vide Office Order No. 57/FCS dated 15<sup>th</sup> June 1979, Prakash Rai, petitioner in writ petition No. 64 of 2000 was promoted to the post of Office Superintendent

with effect from 30<sup>th</sup> January 1982 vide Office Order No. 229/Gen/Est dated 21<sup>st</sup> January 1982 and P.K. Rai, petitioner in writ petition No. 65 of 2000 was promoted to the post of Office Superintendent with effect from 25<sup>th</sup> January 1982 vide Office Order No. 229/Gen/Est dated 21<sup>st</sup> January 1982. The post of Office Superintendent is a Grade I post as per Schedule - II of Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984 and is a feeder post for promotion to the Sikkim State Civil Service. These three petitioners were promoted to the lowest gazetted grade with effect from 24<sup>th</sup> August 1993 vide Office Order No. 616/G/EST dated 30<sup>th</sup> August 1993. Thereafter, the petitioners were placed in the junior scale of Sikkim State Civil Service with effect from 24<sup>th</sup> August 1993 vide Office Order No. 914/G/DOP dated 1<sup>st</sup> September 1997. The respondents in writ petitions No. 64 of 2000 and 65 of 2000 are same and in writ petition No. 63 of 2000 one L.M. Pradhan has been impleaded as respondent No. 3 and T.N. Kazi as respondent No. 4, who has been impleaded as respondent No. 3 in writ petition Nos. 64 and 65 of 2000, Smt. Tenzing Dolkar as respondent No. 5, who has been impleaded as respondent No. 4 in writ petition Nos. 64 and 65 of 2000, Smt. Tshering Doma as respondent No. 6 who has been impleaded as respondent No. 5 in writ petition Nos. 64 and 65 of 2000 and Alfred Karthak as respondent No. 7, who has been impleaded as respondent No. 6 in writ petition Nos. 64 and 65 of 2000. Bhupendra Sharma, petitioner in writ petition No. 63 of 2000 stated that L.M. Pradhan, respondent No. 3 was initially appointed as Inspector in the Industries Department in the scale of Rs.510-900 vide Office Order No. 289 dated 23<sup>rd</sup> July 1981. Similarly T.N. Kazi, respondent No. 4 was also appointed as Inspector in the Industries Department in the scale of Rs.510-900 vide Office Order No. 569/DI dated 4<sup>th</sup> September 1982 and the post of



Inspector, Industries Department is not included in the Grade – I of schedule II of Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984. Prakash Rai and P.K. Rai, petitioners in writ petitions No. 64 of 2000 and 65 of 2000 did not implead L.M. Pradhan as one of the respondents and they have impleaded T.N. Kazi as respondent No. 3 in writ petitions No. 64 of 2000 and 65 of 2000 who was appointed as Inspector, Industries Department in the scale of Rs. 510-900 vide Office Order No. 569/DI dated 4<sup>th</sup> September 1984 and the post of Inspector, Industries Department is not a Grade I post in Schedule II of Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984. The said post of Inspector, Industries Department is not a feeder post to the State Civil Service. Bhupendra Sharma, petitioner in writ petition No. 63 of 2000 stated that L.M. Pradhan, respondent No. 3 and T.N. Kazi, respondent No. 4 were promoted to the post of Assistant Director in the Industries Department vide Office Order No. 1325/(G)/EST dated 16<sup>th</sup> February 1985 in the pay scale of Rs.600-1400. Subsequent to their promotion as Assistant Directors, L.M. Pradhan, respondent No. 3 and T.N. Kazi, respondent No. 4 in writ petition No. 63 of 2000 were inducted in the junior scale of Sikkim State Civil Service vide Notification No. 32/GEN/EST dated 10<sup>th</sup> August 1993. It is stated by Prakash Rai and P.K. Rai, petitioners in writ petition No. 64 of 2000 and 65 of 2000 that T.N. Kazi, respondent No. 3 was promoted to the post of Assistant Director in the Industries Department vide Office Order No. 1325/(G)/EST dated 16<sup>th</sup> February 1985 in the scale of Rs.600-1400. The said T.N. Kazi was inducted into State Civil Service in the junior scale thereof vide Notification No. 32/GEN/EST dated 10<sup>th</sup> August 1993. Smt. Tenzing Dolkar, respondent No. 5 in writ petition No. 63 of 2000 and respondent No. 4 in writ petitions No. 64 of 2000 and 65 of 2000 was promoted as

Office Superintendent vide Office Order No. 21/SCST dated 7<sup>th</sup> October 1982 in the scale of Rs.550-1100. She was promoted to the post of Welfare Officer vide Office Order No. 235/G/EST dated 22<sup>nd</sup> February 1986 in the pay scale of Rs.660-1400 and later inducted in the junior scale of Sikkim State Civil Service by the same Notification No. 32/GEN/EST dated 10<sup>th</sup> August 1993. Smt. Tshering Doma, respondent No. 6 in writ petition No. 63 of 2000 and respondent No. 5 in writ petitions No. 64 of 2000 and 65 of 2000 was promoted as Chief Tourist Guide vide Office Order No. 540/G/EST dated 22<sup>nd</sup> April 1986 in the pay scale of Rs.1320-2300 with effect from 10<sup>th</sup> April 1986 and was promoted to the lowest gazetted post of assistant Director in the Tourism Department vide Office Order No. 1512/G/DOP dated 15<sup>th</sup> March 1995. It is the case of the petitioners that the post of Chief Tourist Guide is not a Grade I post of Schedule II of Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984. Bhupendra Sharma, petitioner in writ petition No.63 of 2000 alleged that L.M. Pradhan, respondent No.3, T.N. Kazi, respondent No.4, Smt. Tenzing Dolkar, respondent No.5 and Smt. Tshering Doma, respondent No.6 were promoted to the lowest gazetted grade and inducted in the State Civil Service in gross violation of the provisions of rule 4 of Sikkim State Civil Service Rules, 1977 as well as rule 3 thereof amended vide Notification No. E(32)/59/GEN/DOP dated 27<sup>th</sup> March 1995 and these respondents are junior to the petitioner, Bhupendra Sharma and the petitioner had accordingly represented from time to time for having been superseded. It is further alleged that the State respondents instead of redressing the grievances of the petitioner granted further promotions to these respondents by placing them in higher grade and rank of Deputy Secretaries in the State Civil Service. L.M. Pradhan, respondent No.3 and T.N. Kazi, respondent No.4 were

promoted as Deputy Secretary with effect from 22<sup>nd</sup> June 1995, and Smt. Tenzing Dolkar, respondent No.5 and Smt. Tshering Doma, respondent No.6 were promoted as Deputy Secretary with effect from 8<sup>th</sup> December 1997 in violation of rules of promotion and seniority. The petitioner, Bhupendra Sharma again made representations to the Chief Minister, Chairman, Seniority Review Committee, Government of Sikkim and respondent No.1 and 2 demanding their promotion on the basis of their seniority. It is, therefore, the case of the petitioner Bhupendra Sharma that he being a member of the Sikkim Subordinate (Ministerial and Executive) Service, ought to have been considered for promotion and induction in the State Civil Service before L.M. Pradhan, respondent No.3, T.N. Kazi, respondent No.4 and Smt. Tshering Doma, respondent No.6 as the posts held by these respondents were not Grade I posts in the Sikkim Subordinate (Ministerial and Executive) Service Rules and were also juniors to the petitioner in service. The representations of protests and requests for redressal of grievances having not been attended to by the Government a legal notice has been issued demanding justice but the State respondents instead of redressing the grievances granted promotions to L.M. Pradhan, respondent No.3, T.N. Kazi, respondent No.4, Smt. Tenzing Dolkar, respondent No.5, Smt. Tsheing Doma, respondent No.6 to the posts of Deputy Secretaries vide Office Order dated 6<sup>th</sup> December 1997. Similarly, Shri Prakash Rai and Shri Pradeep Kumar Rai, petitioners in writ petition No.64 of 2000 and No.65 of 2000 alleged that T.N. Kazi, respondent No.3, Smt Tenzing Dolkaar, respondent No.4 and Smt. Tshering Doma, respondent No.5 were promoted to the lowest gazetted grade and inducted in the State Civil Service in gross violation of the provisions of rule 4 of Sikkim State Civil Service Rules, 1977 as well as rule 3 thereof amended vide Notification No.



E(32)/59/GEN/DOP dated 27<sup>th</sup> March 1995 and they are junior to the petitioners and they had accordingly represented from time to time for having been superseded. It is further alleged that the State respondents instead of redressing the grievances of the petitioners granted further promotions to T.N. Kazi, respondent No.3, Smt. Tenzing Dolkar, respondent No.4 and Smt. Tshering Doma, respondent No.5 by placing them in higher grade and rank of Deputy Secretaries in the State Civil Service. The respondent No. 3 was promoted with effect from 22<sup>nd</sup> June 1995 and the respondent Nos. 4 and 5 were also promoted as Deputy Secretaries with effect from 8<sup>th</sup> December 1997. The petitioners again made representations to the Chief Minister, Chairman, Seniority Review Committee, Government of Sikkim and respondent Nos.1 and 2 demanding their promotion on the basis of their seniority. It is, therefore, the case of the petitioners that they being members of the Sikkim Subordinate (Ministerial and Executive) Service, ought to have been considered for promotion and induction in the State Civil Service before T.N. Kazi, respondent No.3, Smt. Tshering Doma, respondent No.5 as the posts held by these respondents were not Grade I posts in the Sikkim Subordinate (Ministerial and Executive) Service Rules and were also juniors to the petitioners in service. The representations of protests and requests for redressal of grievances having not been attended to by the Government a legal notice was issued demanding justice but the State respondents instead of redressing the grievances granted promotions to T.N. Kazi, respondent No.3, Smt. Tenzing Dolkar, respondent No.4 and Smt. Tshering Doma, respondent No.5 to the posts of Deputy Secretaries vide Office Order dated 6<sup>th</sup> December 1997. Being aggrieved, the petitioners Bhupendra Sharma, Prakash Rai and P.K. Rai filed writ petitions No.490 of 1998, 495 of 1998 and 494 of 1998 respectively.



All these three writ petitions were disposed of by order dated 17<sup>th</sup> September 1998, inter alia, directing the State respondents to constitute a Committee consisting of the Finance Secretary, Secretary to the Department where the petitioners were working at the material time and the Secretary, Department of Personnel, A. R. & Training and the said Committee should consider the points canvassed in the writ petition keeping it open for the petitioners to raise other points if advised. It was further directed that the Committee shall submit its report within six weeks from the date of filing of representations before it by the petitioners. It appears from the writ petitions that two petitioners namely Prakash Rai and P.K. Rai filed writ petitions No. 567 of 1998 and 568 of 1998 when they found that the Committee did not submit its report within the period as directed. While disposing of the said writ petitions, the Court had ordered that the grievances of the petitioners made in the writ petitions shall be considered and disposed of by Shri Tashi Choppel, former Chairman, Sikkim Public Service Commission, not as a Member of One Man Committee but as an Officer of the Court and accordingly he was appointed to consider and dispose of the grievances raised in the writ petitions within two months from the date of receipt of the order. The petitioners accordingly appeared before the Special Officer accompanied by their counsel on 25<sup>th</sup> January 1999 before whom they made their submissions. A copy of the report of the Committee was received by the petitioner in the last week of April 2000 forwarded by the Under Secretary, Department of Personnel, A.R. and Training. The report of Shri Tashi Choppel has been assailed by the petitioners on the following grounds: -

- (i) The report is arbitrary and contrary to the sound principles of law.



- (ii) The report is unjust and unreasonable for failure to mention the reason promoting respondent No. 4 who is junior to the petitioner.
  - (iii) The report has laid more emphasis upon the exigency of services as being the reason for promotion of the respondent No. 3 and 5.
  - (iv) The Committee has failed to explain the transfer of the respondent No. 4 to other Departments soon after her promotion.
  - (v) As Shri Tashi Choppel the Special Officer had held post of Secretary, Establishment Department and, therefore, had been defending the action of the Government, his report needs to be turned down.
  - (vi) Since the Committee did not give justification of promotion of respondents No. 3, 4 and 5 in the light of their seniority vis-à-vis the petitioners, it has prejudiced the rights and interests of the petitioners.
  - (vii) The Committee has wrongly relied upon Justice D.M. Sen Committee, Shri K.C. Pradhan Committee and Malhotra Committee, etc. as such reports are not at all applicable in the case of the petitioners. The cases of Shri U.D. Lama and others are also not applicable because during the said period the petitioners had not been promoted to the lowest gazetted grade.
3. On the above premises the petitioners have made the following prayers in writ petition Nos.63, 64 and 65: -
- (a) Promote the petitioners to the lowest gazetted grade with effect from 16<sup>th</sup> February 1985 or prior to this day and place them in the



seniority list above the Respondent Nos.3 to 6 so far as writ petition No.63 of 2000 is concerned and Respondent Nos.3 to 5 so far as the writ petition Nos.64 and 65 of 2000 are concerned;

- (b) Induct the petitioners in the State Civil Service with effect from 16<sup>th</sup> February 1985 or prior to this day and place his name above the respondent Nos.3 to 6 in the seniority list so far as the writ petition No.63 of 2000 is concerned and respondent Nos.3 to 5 so far as the writ petition Nos.64 and 65 of 2000 are concerned;
- (c) Promote the petitioners to the rank of Deputy Secretary in the Pay Scale of Rs.2525-4000 with effect from 22nd June 1995 and place their names at the appropriate stage of seniority list above the Respondent Nos.3, 4, 5 and 6 so far as the writ petition No.63 of 2000 is concerned and respondent Nos.3, 4 and 5 so far as writ petition Nos.64 and 65 are concerned;
- (d) Direct the respondent Nos. 1 and 2 to grant all service as well as monetary benefits with arrears in terms of the prayers made above;
- (e) Direct the respondents to grant cost of the proceedings; and
- (f) Grant any other relief or relieves to which the petitioner is entitled.
- (g) Direct the respondent Nos. 1 and 2 to issue office order in the manner they have issued the above office order dated 8<sup>th</sup> February 2001 being office order No. 1639/(G)/DOP dated 8<sup>th</sup> February 2001 and place the petitioners in appropriate positions in the seniority list considering their long experiences.



4. On behalf of the State respondents, counter affidavit has been filed on behalf of the respondent No. 2, the Secretary, Department of Personnel, A. R. & Training in writ petition No. 65 of 2000 and the respondents adopted the same counter affidavit in writ petition Nos. 63 of 2000 and 64 of 2000. It is stated that the respondent Nos. 3 and 4, namely, T.N. Kazi and Smt. Tenzing Dolkar were inducted in the State Civil Service and entered the lowest gazetted grade thereof with effect from 7<sup>th</sup> March 1986, while the respondent No.5 entered in the lowest gazetted grade of State Civil Service with effect from 10<sup>th</sup> April 1986. Their inter-se seniority in the State Civil Service was fixed vide notification No. 45/Gen/Est. dated 10th August 1993. The State respondents stated that the respondents Nos.3, 4 and 5 were promoted into the lowest gazetted grade on different dates in the year 1986 in consideration of their seniority within their respective Departments. Since the induction and fixation of seniority of the respondents Nos.3, 4 and 5 and others which were challenged in writ petition No.21 of 1993 in the matter of U.D. Lama and others -vs- State of Sikkim and others were upheld by this Court and was confirmed by the Hon'ble Supreme Court in Civil Appeal No.14872 of 1996 reported in (1997) 1 SCC 111, it is now not open for the petitioners to reopen a settled case with regard to the induction of respondent Nos.3, 4, 5 and 6 in the State Civil Service. It has been alleged that the writ petitions need to be dismissed on the ground of delay and laches. The allegations of violation of Rule 4 of Sikkim State Civil Service Rules, 1977 as well as amended Rule 3 vide notification No.32/59/Gen/DOP dated 27<sup>th</sup> March 1995 have been denied. It has been stated that as per the rules the Government can adopt other method of induction into the State Civil Services in the exigency of service in consultation with the Sikkim Public Service Commission without resorting to the method of



direct recruitment or by promotion as provided under the Sikkim State Civil Service (Amendment) Rules, 1995.

5. We have carefully considered the matter in details and the submissions made at the bar. In our view, the writ petitions appear to have been filed under gross misconception. In this regard the report of the Special Officer consisting of Shri Tashi Choppel appointed by this Court vide order dated 4<sup>th</sup> January 1999 which has been filed as Annexure P18 with Writ Petition Nos.568 of 1999 and 569 of 1999 should be looked into. The Special Officer was appointed to consider and dispose of the representations and grievances raised in the writ petition Nos.568 of 2000 and 569 of 2000 which were same as the ones raised in the writ petition No.63 of 2000 also.

6. The Special Officer has considered the representations in details and have given personal hearing of the petitioners who had appeared before the Special Officer with their Counsel. Relevant portions of the finding of the Special Officer in his report dated 28<sup>th</sup> January 1999 are extracted below: -

"(ii) I enquired from the petitioners whether the gradation list Appendix - 3 had been notified by the Government to indicate that the list was purported to be the inter-se-seniority of the persons holding the posts of Office Superintendents and other persons holding the posts of Inspector of Industries, Information Assistant etc. They replied that they were not aware of such a seniority list had been notified. They contended that the list - Appendix-3 has been prepared by the petitioner on the basis of the pay scales showing me a copy of the Government Gazette containing the pay scales of various categories of posts sanctioned for different departments of the State Government. According to the pay scales, the post of Office Superintendent, Inspector of Industries and Information Assistant were in the same scale of Rs.510-900 and in 1984 only the Office Superintendents had been



granted higher pay scale of Rs.550 - 1100. They contended that Shri L.M.Pradhan, Shri T.N.Kazi and Mrs.Tsering Doma were in the same grade/lower grade when they were promoted to the lowest gazetted grade in 1985 and in 1986 and pleaded that they being junior superseded the seniors in the persons of the three petitioners. On this point I referred to page 692 and 693 of the book "Employment- its terms and conditions" - wherein it is stated "A proper determination of equation in the matter of post can be done after considering comparative duties, qualifications, nature of work and responsibilities. The posts of Private Secretary and Readers in the High Court require integrity and confidence and experience in the procedure of Courts and as such they cannot be equated with the Superintendent. However, it will not affect Article 14 and 16 of the Constitution". It has further been stated "In the Conference of Chief Secretaries four principles were decided for equation of posts. They were (i) nature and duties of the post (ii) responsibilities or powers exercised, (iii) minimum qualifications for recruitment, and (iv) salary of the post. In addition to this the Central Government could have considered any other circumstance". A Committee under Shri M.L. Malhotra, Director, Accounts and Administrative Training Institute had been constituted by the State Government vide office memorandum No.186/Gen/DOP dated 30.11.95 to examine the representation submitted by 47 Section Officers (inclusive of the Writ Petitioners) claiming their seniority over Shri T.N.Kazi and Mrs. Tsering Doma. The Committee had the personal hearing of 6 representatives (including one of the Writ Petitioners, namely Shri P.K. Rai) of the 47 Section Officers. In the report it has been mentioned that Shri T.N. Kazi was selected for the post of Inspector of Industries through written examination and viva-voce test conducted by the Selection Committee consisting of Director of Industries, Joint Secretary, Establishment and Joint Secretary, Finance. Shri L.M. Pradhan, who was also selected alongwith Shri T.N. Kazi for the post of Inspector of Industries. It has further been mentioned that Mrs. Tsering Doma had been promoted as Information Assistant after the completion of training in the sphere of tourism.

The Malhotra Committee had concluded stating that Shri T.N. Kazi and Mrs. Tsering Doma belonged to separate cadres and not to the Sikkim Subordinate (Ministerial & Executive) Service and that they had been promoted to the gazetted grade on their own line of promotion. They were inducted into Sikkim State Civil Service by proper interview and screening by Sikkim Public Service Commission on the basis of the recommendation of Justice D.M. Sen Committee.

In absence of any authentic document, the equation of the post of Office Superintendents and the posts of Inspector of Industries as well as the post of Information Assistant cannot be

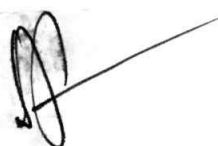
accepted and the seniority on the basis of pay scale only cannot be considered as correct".

7. Even during the hearing nothing could be shown on behalf of the petitioners contrary to what has been found by the Special Officer in his report extracted above.

8. For convenience, a comparative statement of seniority in respect of the petitioners, private respondents and one T.T. Bhutia connected with private respondent Alfred Karthak is appended below :-

COMPARATIVE STATEMENT OF SENIORITY IN RESPECT OF PETITIONERS,  
PRIVATE RESPONDENTS AND T.T. BHUTIA CONNECTED WITH PRIVATE  
RESPONDENT SHRI ALFRED KARTHAK

Sl No	Name	Date of promotion in the highest non-gazetted grade	Date of promotion in the lowest Gazetted grade	Date of induction into Civil Service	Date of promotion in the State of Deputy Secretary	Remarks if any
1.	2.	3.	4.	5.	6.	7.
1.	Shri Bhupendra Sharma Petitioner in writ petition No. 63 of 2000.	28.5.79	24.8.93	24.8.93	-	
2.	Shri Prakash Rai Petitioner in writ petition No. 64 of 2000.	30.1.82	24.8.93	24.8.93	-	
3.	Shri P.K. Rai Petitioner in writ petition No. 65 of 2000.	25.1.82	24.8.93	24.8.93	-	



1.	2.	3.	4.	5.	6.	7.
4.	Shri L.M. Pradhan Respondent No. 3 in writ Petition No. 63 of 2000 and not impleaded in writ petition Nos.64 and 65 of 2000.	24.7.81	16.2.85	7.3.86	22.6.95	
5.	Shri T.N. Kazi Respondent No. 3 in writ petition Nos.64 and 65 of 2000 and respondent No. 4 in writ petition No.63 of 2000.	25.8.82	16.2.85	7.3.86	22.6.95	
6.	Smt. Tenzing Dolkar Respondent No. 4 in writ petition Nos.64 and 65 of 2000 and respondent No. 5 in writ petition No.63 of 2000.	1.10.82	24.2.86	7.3.86	6.12.97	
7.	Smt. Tshering Doma Respondent No. 5 in writ petition Nos.64 and 65 of 2000 and respondent No. 6 in writ petition No.63 of 2000.	20.4.84	10.4.86	10.4.86	6.12.97	



1.	2.	3.	4.	5.	6	7.
8.	Shri Alfred Karthak Respondent No. 6 in writ petition Nos.64 and 65 of 2000 and respondent No. 7 in writ petition No.63 of 2000.	1.5.78	5.4.84	5.4.84	27.8.94	
9.	Shri T.T. Bhutia	8.9.78	5.4.84	5.4.84	27.8.94	

9. Thus it is seen that the cases of the petitioners are quite distinct from that of the respondents No.3, 4, 5 and 6 so far as writ petition No.63 of 2000 is concerned and respondents No.3, 4 and 5 so far as writ petition Nos.64 and 65 of 2000 are concerned. Those respondents were first promoted to the lowest gazetted grade on different dates in the year 1986 and were inducted into the State Civil Service in the year 1993 vide notification No.32/Gen/Est. dated 10th August, 1993 (Annexure P-7 to the writ petitions) with effect from 7<sup>th</sup> March 1986 or from the date of appointment into the lowest gazetted grade whichever is later. Thus L.M. Pradhan, T.N. Kazi, Smt. Tenzing Dolkar, Smt. Tshering Doma, Alfred Karthak all respondents in writ petitions were recruited as members of Sikkim State Civil Service with effect from 7<sup>th</sup> March 1986, 7<sup>th</sup> March 1986, 7<sup>th</sup> March 1986, 10<sup>th</sup> April 1986 and 5<sup>th</sup> April 1984 respectively. The names of the respondents No.3, 4, 5 and 6 in writ petition No.63 of 2000 and respondents No.3, 4 and 5 in writ petition Nos.64 and 65 of 2000 can be found at serial Nos.103, 104, 114 and 127 respectively. Whereas it is the admitted case of the petitioners that they were promoted to the lowest gazetted grade with effect from 24<sup>th</sup> August

1993 vide O.O.No.6161(G)/Est. dated 30th August, 1993 vide Annexure P2 of the Writ petitions and were inducted into the State Civil Service with effect from the same date retrospectively vide office order No.914/(G)/DOP dated 1<sup>st</sup> September 1997 (Annexure P-3) to the writ petitions. Therefore, it can be seen that on the dates when the respondents No.3, 4, 5 and 6 in writ petition No.63 of 2000 and respondents No.3, 4 and 5 in writ petition Nos.64 and 65 of 2000 were promoted into the lowest gazetted grade in 1986 from which dates they pray for promotion retrospectively, the petitioners were not born in the cadre. As held in the case State of Bihar and others -vs- Akhouri Sachindra Nath and Others reported in 1991 Supp.( 1) SCC 334, no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others.

10. The very foundation of the petitioners' case that the respondent Nos.3, 4, 5 and 6 in writ petition No.63 of 2000 and respondent Nos.3, 4 and 5 in writ petition Nos.64 and 65 of 2000 were inducted in the State Civil Service in gross violation of the rules cannot be sustained because their induction took place in the year 1993 vide notification No.32/( G)/Est. dated 10th August, 1993 when there was a mass induction of those persons not belonging to any organised service into the State Civil Services in the effort of the State respondents to streamline State administration. This was done by exercising the exigency clause provided in Rule 4(4) of the Sikkim State Civil Service (Amendment) Rules, 1995. Therefore, induction of the respondents in the Civil Services was validly done under the rules. The aforesaid mass induction had been challenged in writ petition No.21 of 1993 in the matter of U.D. Lama and Others -vs- State of Sikkim and Others.



The facts of the case has been set out concisely by Shri Tashi Choppel, Special Officer in his report dated 28<sup>th</sup> January 1999 which is extracted as below: -

"the Government had constituted a Committee under the Chairmanship of a retired High Court Judge, Brig.(Justice) D.M. Sen vide Notification No.56/Home/89-90 dated 22.9.1989 to examine the representations of the officers of the general category and to suggest method/principle for induction of serving gazetted officers into the Sikkim State Civil Service and a method for regulation of their own seniority with the officers already in the service (Sikkim State Civil Service ). The Justice Sen Committee submitted its report on 29.12.90 and the State Government accepted the recommendation of the Committee and issued Notification No.61/Gen/Est dated 29.12.1990 followed by Notification No. E(23)74/Gen/Est. dated 8.2.91 - Appendix 4. There was resentment amongst the officers of the State Civil Service due to the action of the Government to induct all gazetted officers in the general category into the State Civil Service with the protection of their seniority on the basis of the recommendation of the Justice Sen Committee.

The State Government, issued a Notification No.58/Gen/Est. dated 20.11.1992 constituting a Committee under the Chairmanship of Shri K.C. Pradhan, Advisor with six senior officers of the State Government. The Committee submitted its report on 7.7.93. The Government decided to induct all the officers including officers holding the lowest gazetted grade into the Sikkim State Civil Service as recommended by the Sikkim Public Service Commission. Therefore, 132 (actual 158) officers vide Notification No.32/Gen/Est. dated 10.8.93 (submitted by the Petitioners as Annexure-P.7 and Annexure 'A' to their Writ Petitions) were appointed to the Sikkim State Civil Service. I would like to refer to the relevant recommendations of the Pradhan Committee and the recommendations read as under:-

"In the absence of the Notification of specific posts for the Civil Service, most of the Officers are languishing in the administrative jobs that do not offer any challenges with the result that officers are often badly under-worked. If the services are to be regulated properly then it is imperative that specific posts be notified against which only Civil Service Officers should be appointed. These posts should cover the entire range of administrative functions including development, law and order and regulatory duties so as to ensure the career development of young officers in order to make them competent to hold higher positions. The

development of young officers in order to make them competent to hold higher positions. The officers in the Service being trained for administrative functions should be utilised for this purpose. Unless this is done, implementation of the service rules as well as assuring no such anomalies in future will not be possible.

In examining the representations made and also the various judgements and reports submitted to the Government earlier, it is seen that the 29 officers inducted in 1982 was not in accordance with any of the statutory rules but in exercise of Government executive power due to "exigencies of service". This however, did not prevent the Office Superintendents from getting their promotions and inductions into the Service claiming that the above inductions were made under rule -IV of the Service Rules. It is, in this light that the officers not included in the Civil Service have requested for review of the entire exercise to consider their case in the light of other provisions of the Service Rules which provides for induction and seniority to the Service by a method other than by selection or examination. The Committee discussed the various view points presented and also was apprised of the fact that the Justice Sen Committee had examined all the technical points in its legal and administrative perspective and that the Sikkim Public Service Commission and the other Committees of the Government had also recommended the settlement of the matter along the lines as recommended by the Committee".

This Court had considered the submission of the learned Counsel for the petitioners that retrospective amendment in the Sikkim State Civil Service Rules, 1977 Appendix 6 - re-introducing the exigency clause by the Notification No. E(32)59/Gen/Est. dated 23.7.95, dated 29.5.95 was mala fide as it took away the vested rights of the petitioners relating to their seniority. The Court has stated that the Government had made the amendment based on the recommendation of the Committee constituted vide Notification No: 84/Gen/Est. dated 25.2.94 on the matter of identification and encadrement of posts in the State Civil Service. We quote the observation of this Hon'ble Court "In our opinion, the amendments were made not for any extraneous reasons but with the intention of streamlining the general administration. The amendments were made under proviso to



Article 309 of the constitution. The service rules may be amended with retrospective effect under that proviso is well established. Relying on B.S. Vadera -vs- Union of India AIR 1969 SC 118, it was held in Accountant General Vs S. Daraiswamy ( 1981) 4 SCC 93 that the rules framed under 309 of the Constitution of India could be retrospective operation."

(iv) With regard to seniority this Court has observed "However, in the present case (Writ Petition No.21 of 1993) no vested rights of the petitioners were affected by the retrospective amendment of the Rules or by retrospective appointment of respondent Nos.4 to 65 and fixation of their seniority accordingly. It was held in Union of India -vs- Krishna Murthy (1989) 4 SCC 689: "Nobody has any fundamental right to a particular seniority or to any chance of promotion." Again, it was held in K.S. Vora V. State of Gujarat (1988) 1 SCC 311 that "rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority. If the rules were made bonafide and to meet exigencies of the service, no entertainable grievance could be made".

11. The induction of the petitioners and others made in the year 1993 having been held to be valid even by the Supreme Court before whom the judgement of this Court was challenged, it is now not open for the petitioner to assail the legality and propriety of such action any more.

12. It is an admitted case that the petitioners have done nothing other than approaching the Government from time to time. It is a settled position of law that repeated representation is no reason as to why the Court should entertain a belated and stale claim. When representations have not been responded to it is to be presumed that the Government has rejected such representations. Even assuming that the petitioners did have rights and were indeed superseded in matters of promotion in 1986 it was incumbent and imperative upon them to have sought for redressal of the grievances before a competent court of law when their prayers for

settlement of such grievance were not acceded and/or refused and not wait for time to lapse enabling the beneficiaries of the impugned action of the Government from getting their rights matured to a vested right due to efflux of time. The respondents No.3, 4, 5 and 6 in writ petition No.63 of 2000 and respondents No.3, 4 and 5 in writ petition Nos. 64 and 65 of 2000 as per the petitioners themselves have already been promoted as Deputy Secretaries in 1997. From the prayers made by them in the writ petitions the petitioners sought for promotion to the lowest gazetted grade with effect from 16<sup>th</sup> February 1985 and induction in the State Civil service from the said date and also promotion to the rank of Deputy Secretary with effect from 22<sup>nd</sup> June 1995 with consequential benefits in respect of seniority above the respondents as well as other monetary benefits accruing as a result thereof.

In the State of Orissa -vs- Pyarimohan Samantaray and Others (1977) 3 SCC 396 the Supreme Court held that -

“6. .... There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in *Rabindra Nath Bose -vs- Union of India*, the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. ....”

In *Gian Singh Mann -vs- High Court of Punjab and Haryana* and another (1980) 4 SCC 266, it has been observed by the Supreme Court as follows: -



"3. .... That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground. ...."

It has been further held in B.S. Bajwa -vs- State of Punjab (1998) 2 SCC 523, the Supreme Court further observed: -

"7. .... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. ...."

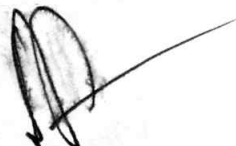
13. No order for consideration of the cases of the petitioners can also be passed for the reasons of inordinate and unexplained delay by them in approaching this Court. Furthermore, it is an admitted position that L.M. Pradhan and T.N. Kazi were promoted to the lowest gazetted grade on 16<sup>th</sup> February 1985, Smt. Tenzing Dolkar was promoted on 24<sup>th</sup> February 1986 and Smt. Tshering Doma was promoted on 10<sup>th</sup> April 1986. They are all respondents in the three writ petitions whose seniority and promotion have been challenged. The petitioners challenged the promotions in 1998 in writ petition Nos.494 of 1998, 568 of 1998 and the present writ petitions were filed on 26<sup>th</sup> March 2001. The petitioners chose to challenge the promotions of the respondents No.3, 4, 5 and 6 for the first time in 1998, that is, after a lapse of almost 12 years.

14. The ground of bias to assail the report of Shri Tashi Choppel, the Special Officer, on the ground that he had held the post of Establishment Secretary and as such had been defending the action of the Government cannot be sustained

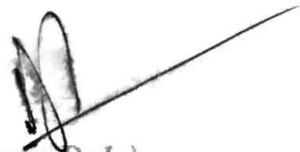
because when Shri Tashi Choppel was appointed the Special Officer by this Court vide order dated 4<sup>th</sup> January 1999 no objection had been raised to such appointment on any ground whatsoever. Even before the Special Officer the petitioner did not choose to raise any objection as regards his jurisdiction on the ground of bias. In fact he appeared before the Special Officer accompanied by his counsel willingly and fully participated in the proceedings. As such it is not now open for the petitioner to raise such objection after having taken a chance and failed in his attempt to satisfy the Special Officer.

15. So far as the case of the respondent No.6, Alfred Karthak is concerned the State respondents have remedied the error/wrong committed to him for placing him below one Shri T. T. Bhutia in the seniority list of Deputy Secretaries when in fact Alfred Karthak was senior to T.T. Bhutia. No relief has been claimed by the petitioners against Alfred Karthak. The case of the petitioners on the other hand is quite different as already discussed above.

16. We asked Mr. B. Sharma, Counsel for the petitioners to submit how the petitioner could claim seniority over the respondents even when the respondents had been appointed to the lowest gazetted grade and had also been inducted in the Sikkim State Civil Service several years prior to the petitioners. Mr. Sharma replied that the petitioners were making representations and same were considered but no relief was given to the petitioner. To say the least the argument is preposterous. A person does not become entitled to relief from the High Court simply because the government did not find merit in his case.



17. There is no merit in the writ petitions. The writ petitions are dismissed.  
There will be however no order as to costs.



*(Anup Deb)*  
*Judge*  
*03-07-2001*



*(R. Dayal)*  
*Chief Justice*  
*03-07-2001*