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SRI DEVENDRA PRASAD SHARMA

v.

THE STATE OF MIZORAM AND ORS.

MARCH 10, 1997

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[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Service Law :

Mizoram Police Service Rules, 1986 :

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Rule 25(iii)—Seniority—Inter se seniority between direct recruit and promotee Deputy Superintendents of Police—Held, the inter se seniority of direct recruits and promotees has to be determined in accordance with quota and rotation—Accordingly seniority was rightly determined as per the respective dates of appointment—Therefore, the rotation has to be considered as per

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the date of appointment and in accordance with the vacancy under the rules—In the meeting held by DPC, petitioner was found to be unfit for promotion to the post of Additional Superintendent of Police—He may be found fit at a later stage of selection, but he cannot get seniority over the persons who were found fit in the earlier meeting of DPC and have already

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got promoted to higher post—Seniority in lower post loses its significance.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 4428 of 1997.

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From the Judgment and Order dated 21.11.96 of the Assam High Court in W.A. No. 81 of 1994.

P.K. Goswami, Kailash Vasdev and C.K. Sasi for the Petitioner

The following Order of the Court was delivered :

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The petitioner was promoted as Inspector of Police on July 10, 1973 and was further promoted as Deputy Superintendent of Police on April 8, 1982. The contesting respondents were directly recruited as Deputy Superintendents on March 25, 1982. Their inter-se seniority is regulated by Rule 25 of the Mizoram Police Service Rules, 1986. Rule 25 reads as under :

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"25. Seniority - The Administrator shall prepare a list of members

of the Service arranged in order of seniority as determined in the manner specified below : A

(i)(a) Persons recruited on the results of the competitive examination in any year shall be ranked *Inter se* in the order of merit in which they are placed at the competitive examination on the results of which they are recruited, those recruited on the basis of an earlier examination being ranked senior to those recruited on the basis of a later examination. B

(b) The relative seniority *inter se* of persons recruited by selection shall be determined on the basis of the order in which their names are arranged in the list prepared under rule 13, those recruited on the basis of an earlier selection being ranked senior to those recruited on the basis of a later selection. C

(ii) The seniority of members of the Service appointed at the initial constitution of the Service in accordance with the provisions of part VI of these rules shall be determined by the Administrator in consultation with the Board. D

Provided that in the case of persons appointed under sub rule (i) of the rule 15, if two or more persons belonging to the same parent service or Department are thus appointed, they shall be ranked *inter se* in the order of their relative seniority in the parent Service or Department as the case may be. E

(iii) The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under rule 5." F

In the matter of fixation of the *inter se* seniority under Rule 25(iii), the relative seniority of direct recruits and of promotees has to be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5. The Division Bench has pointed out in the impugned order the position as under : G

"Clause (ii) of rule 25 quoted above clearly stipulated that the H

A seniority of the service appointed at the initial constitution of the service shall be determined by the administrator in consultation with the Board. Since all the respondents have been appointed as members of the service at the initial constitution of service their seniority has to be determined by the Administrator in accordance with the said rules."

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Shri P.K. Goswami, learned senior counsel for the petitioner, contends that in view of the definition under Rule 2(g) of 'service' read with Rule 5, the *inter-se* seniority of the direct recruits and promotees is required to be determined with reference to the date when the seniority falls to be due. We find no force in the contention. The statutory rule 25(iii), as indicated above, clearly postulates that the *inter se* seniority of the direct recruits and the promotees has to be determined in accordance with quota and rotation. Accordingly, seniority was rightly determined as per the respective dates of appointment. Therefore, the rotation has to be considered as per the date of appointment and in accordance with the vacancy under the rules. Otherwise, the rule of rota-quota unduly gets disturbed.

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When the claims for promotion to the post of Addl. Superintendent of Police had come up for consideration, in the meeting held by the DPC on October 6, 1988, the petitioner was found to be unfit and contesting respondents were found to be fit as per the proceedings indicated in the judgment of the High Court. As a consequence, the petitioner could not claim right to promotion at that time on the basis of the assessment made by the DPC or to seniority over those promoted as per the recommendation of the DPC. The petitioner may be found fit at a later stage of selection but he cannot get seniority over the persons who were found fit in the meeting held in October 6, 1988 and promoted on October 20, 1988 and have already got promoted to higher post i.e. Addl. Superintendent of Police. The seniority in lower post loses its significance.

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The petition, therefore, does not merit interference. It is accordingly dismissed.

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R.P.

Petition dismissed.