



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/539/2023

Smti Yamek Mize Taggu
W/o Shri T. Taggu, working as Section Officer, Arunachal Pradesh Civil Secretariat,
Itanagar, PO/PS Itanagar, District Papum Pare, Arunachal Pradesh. Phone No.
9436224468

VERSUS

The State of AP and 6 Others
represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.

2:The Secretary

Age: 0

Occupation :

3:Shri P.K Pal

Age: 0

Occupation :

4:Shri Toli Karga

Age: 0

Occupation :

5:Shri Nabam Kameng

Age: 0

Occupation :

6:Shri Renyak Tato

Age: 0

Occupation :

7:Ms. Bobita Chowlu

Age: 0

Occupation

Advocate for the Petitioner : Nikita Danggen

Advocate for the Respondent : GA (AP)

Linked Case : WP(C)/217/2023

Yamek Mize Taggu

Age: 49

Occupation :

Address:W/o Shri. T. Taggu

Working as Section Officer

Arunachal Pradesh Civil Secretariat

Itanagar

PO/PS Itanagar

District Papumpare

Arunachal Pradesh.

Ph. No. 9436224468

VERSUS

THE STATE OF AP and 6 Ors.

Age: 0

Occupation :

Address:Represented by the Chief Secretary

Govt. of Arunachal Pradesh. Itanagar.

2:The Secretary

Age: 0

Occupation :

Address:General Administration

Govt. of Arunachal Pradesh

Establishment (A) Branch

AP Civil Secretariat

Itanagar

PO/PS Itanagar

District Papum Pare

Arunachal Pradesh.

3:P. K. Pal

Age: 0

Occupation :

Address:Working as Section Officer

Budget Branch

Arunachal Pradesh Civil Secretariat

Itanagar

PO/PS Itanagar

District Papum Pare

Arunachal Pradesh.

4:Toli Karga

Age: 0

Occupation :
 Address: Working as Section Officer
 LAW Branch
 Arunachal Pradesh Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papum Pare
 Arunachal Pradesh.

5: Nabam Kameng
 Age: 0
 Occupation :
 Address: Working as Section Officer
 Establishment 'A' Branch
 Arunachal Pradesh Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papumpare
 Arunachal Pradesh.

6: Renyak Tato
 Age: 0
 Occupation :
 Address: Working as Section Officer
 WRD Branch
 Arunachal Pradesh Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papumpare. Arunachal Pradesh.

7: M/s Bobita Chowlu
 Age: 0
 Occupation :
 Address: Working as Section Officer
 Finance 'D' Branch
 Arunachal Pradesh Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papumpare
 Arunachal Pradesh.

 Advocate for : Nikita Danggen
 Advocate for : GA (AP) appearing for THE STATE OF AP and 6 Ors.: Advocate ,

,

,

,

,
 , appearing for 2,
 3,
 4,
 5,
 6,
 7, respectively.

Linked Case : WP(C)/540/2023

Larjum Doye
 Age: 53
 Occupation :
 Address:working as Section Officer
 Arunachal Pradesh Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papum Pare
 Arunachal Pradesh. Phone No. 8415080064

VERSUS

The State of AP and 6 Others
 Age: 0
 Occupation :
 Address:represented by the Chief Secretary
 Government of Arunachal Pradesh
 Itanagar.
 2:The Secretary
 Age: 0
 Occupation :
 Address:General Administration
 Government of Arunachal Pradesh
 Establishment A Branch
 A.P Civil Secretariat
 Itanagar
 PO/PS Itanagar
 District Papum Pare
 Arunachal Pradesh.

3:Shri P.K Pal
 Age: 0

Occupation :
Address: Working as Section Officer
Budget Branch
A.P Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

4: Shri Toli Karga
Age: 0
Occupation :
Address: working as Section Officer
Law Branch
A.P Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

5: Shri Nabam Kameng
Age: 0
Occupation :
Address: working as Section Officer
Establishment A branch
A.P Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

6: Shri Renyak Tato
Age: 0
Occupation :
Address: working as Section Officer
RWD Branch
A.P Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

7: Ms. Bobita Chowlu
Age: 0
Occupation :
Address: working as Section Officer
Finance D branch
A.P Civil Secretariat
Itanagar
PO/PS Itanagar

District Papum Pare
Arunachal Pradesh.

Advocate for : Nikita Danggen

Advocate for : GA (AP) appearing for The State of AP and 6 Others: Advocate ,

., appearing for 2,

3,

4,

5,

6,

7, respectively.

Linked Case : WP(C)/218/2023

Larjum Doye

Age: 53

Occupation :

Address:S/o Late T. Doye

Working as Section Officer

Arunachal Pradesh Civil Secretariat

Itanagar

PO/PS Itanagar

District Papumpare

Arunachal Pradesh.

Ph. No. 8415080064

VERSUS

THE STATE OF AP and 6 Ors.

Age: 0

Occupation :

Address:Represented by the Chief Secretary

Govt. of Arunachal Pradesh

Itanagar.

2:The Secretary

Age: 0

Occupation :

Address:General Administration

Govt. of Arunachal Pradesh

Establishment (A) Branch

AP Civil Secretariat

Itanagar

PO/PS Itanagar

District Papum Pare
Arunachal Pradesh.
3:P. K. Pal
Age: 0
Occupation :
Address:Working as Section Officer
Budget Branch
Arunachal Pradesh Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

4:Toli Karga
Age: 0
Occupation :
Address:Working as Section Officer
LAW Branch
Arunachal Pradesh Civil Secretariat
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

5:Nabam Kameng
Age: 0
Occupation :
Address:Working as Section Officer
Establishment 'A' Branch
Arunachal Pradesh Civil Secretariat
Itanagar
PO/PS Itanagar
District Papumpare
Arunachal Pradesh.

6:Renyak Tato
Age: 0
Occupation :
Address:Working as Section Officer
WRD Branch
Arunachal Pradesh Civil Secretariat
Itanagar
PO/PS Itanagar
District Papumpare. Arunachal Pradesh.

7:Bobita Chowlu
Age: 0
Occupation :
Address:Working as Section Officer
Finance 'D' Branch
Arunachal Pradesh Civil Secretariat

Itanagar
PO/PS Itanagar
District Papumpare
Arunachal Pradesh.

Advocate for : Nikita Danggen
Advocate for : GA (AP) appearing for THE STATE OF AP and 6 Ors.: Advocate ,

, appearing for 2,

3,

4,

5,

6,

7, respectively.

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Ms. N. Danggen, Advocate.
For the Respondents	: Mr. I. Riram, Addl. Sr. Govt. Advocate. (R-1 & 2) Mr. T. Kamchi, Advocate. R- 3 to 7
Date of Hearing	: 08.08.2024
Date of Judgement	: 13.08.2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. N. Danggen, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate, State of Arunachal Pradesh representing the respondent Nos. 1 and 2 and Mr. T. T. Tara, learned

counsel for the respondent Nos. 3, 4, 5, 6 and 7.

2. These four writ petitions filed by two writ petitioners are taken up together for final disposal as it involves similar issues, cause of action and are inter connected.
3. By way of WP(C)/217(AP)/2023 and WP(C)/218(AP)/2023 these batch of writ petitions, the final inter-se-seniority list of Section Officer of Arunachal Pradesh Civil Secretariat dated 24.06.2020 has been challenged.
4. The respondent No. 2 filed an affidavit in opposition in the aforesaid writ petitions taking a stand that the final select list was prepared on the basis of a decision of the Departmental Screening Committee held on 11.06.2020. Such decision of the Screening Committee held on 11.06.2020 is under challenge in WP(C)/539(AP)/2023 and WP(C)/540(AP)/2023.
5. The brief facts of the present case can be summarized as follows:-
 - I. The petitioner and the respondent Nos. 3 to 7 were promoted to the post of Section Officers in the Arunachal Pradesh Civil Secretariat.
 - II. Though the respondent Nos. 3 to 7, were promoted at later point of time, they were placed above the present petitioners in the final seniority list for the reason that the respondent Nos. 3 to 7 are direct recruits and the petitioners are promotees. Therefore, the determination made by the Hon'ble Apex Court in **N. R. Parmar –Vs- Union of India and others** reported in **2012 13 SCC 340**, is applicable and accordingly, the respondent Nos. 3 to 7 are required to be placed above the promotees like the petitioners in the final seniority list.
6. At the relevant point of time, Arunachal Pradesh Secretariat Recruitment to the Post of Section Officer Rules, 2004 (for short Rules, 2004) was holding the field regulating the method of recruitment of the post of Section Officers, Group-B

(Gazetted) in Arunachal Pradesh Secretariat Services. Such Rule was enacted in exercise of power conferred under proviso to Article 309 of the Constitution of India.

7. Rule 4 of the said Rules, 2004 prescribes the method of recruitment, age limit and qualification etc. in terms of Column 5 to 14 of the Schedule appended to the said Rules, 2004.

8. In terms of the Schedule, 50% post of Section Officer is to be filled up by promotion on the basis of selection cum seniority from amongst the Assistant of Arunachal Pradesh Secretariat Sub Ordinate Service, who have rendered at least 6 years of regular service in the grade.

9. The remaining 50% are to be filled up by limited departmental competitive examination from amongst the Assistants of Arunachal Pradesh Secretariat, who have rendered 6 years of regular service in the grade on the basis of merit to be adjusted on the basis of an examination having total 350 marks, which includes General Knowledge (100 marks), General English/Noting/Drafting/Easy Writing (100 marks), FRs/SRs/GFRs/Pension Rules/CCS(CCA) Rules/General Provident Fund Rules (100 marks) and Viva-Voce (50 marks).

10. There is no dispute as regards the qualification of the petitioners vis-a-vis the respondent Nos. 3 to 7 for being promoted to the post of Section Officer. There is also no dispute, as regards their date of promotion to the post of Section Officer. It is also not in dispute that the respondent Nos. 3 to 7 were promoted after being successful in the limited departmental competitive examination and that the petitioners were appointed on the basis of selection cum seniority.

11. In the aforesaid backdrop, the learned counsel for the petitioner argues that whole foundation of the decision of the Departmental Screening Committee to re-fix the seniority position is absolutely fallacious, for the reason that the judgment of **N. R. Parmar** (supra), could not have been made applicable on the date of the decision of the Departmental Screening Committee dated 11.06.2020

inasmuch as by that time, judgment of **N.R.Parmar** (supra) was overruled by a subsequent judgment in the case of **K. Meghachandra Singh and Others – Vs- Ningam Siro and Others** reported in **2020 5 SCC 689** and the determination made in **K. Meghchandra** (supra), was made applicable with effect from the date of judgment of the **K. Meghchandra** (supra) i.e. with effect from 19.11.2019 and the screening committee took a decision on 11.06.2020 and recommendation was made for re-structuring of the seniority on the basis of the already overruled decision in **N.R.Parmar** (supra).

12. The other contention of the learned counsel for the petitioner is that, the judgment of **N.R.Parmar** (supra), cannot be made applicable for the reason that the respondent Nos. 3 to 7 cannot be treated as direct recruits inasmuch as the limited competitive examination is not a direct recruitment from the open market but it is limited competitive examination amongst the eligible incumbents from feeder cadres.
13. It is also contended by the learned counsel for the petitioner that even if, it is assumed that the respondents are direct recruits than also they cannot be treated as senior to the petitioners for the reason that when the petitioners were promoted to the post of Section Officer, the respondent Nos. 3 to 7, did not borne into the cadre of Section Officer and therefore, they cannot be put above the petitioners in the seniority list.
14. Per contra, the learned State Counsel submits that the decision of the screening committee held on 11.06.2020 is a reasoned order and its speaks for itself. The screening committee has rightly applied the ratio of the **N.R.Parmar** (supra) and accordingly, fixed the seniority amongst the direct recruits and promotees.
15. Mr. T. T. Tara, learned counsel representing the private respondents contends that Schedule of the Rules, 2004, makes it clear that the private respondents promotion is in the form of an accelerated promotion, which cannot be equated with the normal mode of promotion and therefore, for all meaning and purport,

such promotion is to be treated as direct recruitment and therefore, the petitioners cannot be equated with the private respondent Nos. 3 to 7 and accordingly, the State has, by giving due rigours to the merit and the object of accelerated promotion, has granted them seniority.

16. Referring to an Office Memorandum dated 13.08.2021, learned counsel for the private respondents contends that the seniority fixed is protected under the aforesaid office memorandum and such office memorandum was laid down on the basis of the determination made in **K. Meghchandra** (supra). In absence to challenge to the said office memorandum dated 13.08.2021, the writ petitions are liable to be dismissed.
17. The learned counsel further contends that the private respondent Nos. 3 to 6 were appointed for the post of Section Officer in the year 2017 and the respondent No. 7 was promoted in the year 2019 and therefore, having detected that their seniority were not fixed in conformity with the rota quota system, the respondents filed a representation on 10.11.2017 and on the basis of such representation, their cases were considered by the screening committee.
18. It is the further argument of Mr. T. T. Tara, the learned counsel that on the basis of the roster system, the date of vacancy should be the basis for consideration of the seniority and such vacancy occurred in the year 2013 and therefore, there is no fault of the respondent authorities re-fixing the seniority on the basis of the date of vacancy.
19. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record. Now let this Court consider the merit of the case. In the considered opinion of this Court and as is discernible from the pleadings and arguments, three vital issues arise in the present writ petitions which are formulated as follows:-

- I. Whether the impugned decision of the screening committee based on

principle rendered in **N.R.Parmar** (supra) is sustainable in view of the determination made in **K. Meghchandra** (supra) ?

II. Whether the persons selected for promotion on the basis of limited departmental competitive exam can be termed as direct recruits ?

III. Whether the respondent's promotion should be treated from the date of vacancy or from the actual date of entering into the cadre ?

20. While overruling **N.R. Parmar** (Supra), the Hon'ble Apex Court in **K. Meghchandra** (supra) concluded the following:-

I. The Office Memorandum dated 03.07.1986 were not properly construed in the judgment inasmuch as in the O.M. under challenge in **N.R. Parmar** (Supra), had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process.

II. An unnecessary observation was made in **N. R. Parmar** (supra) to the effect that the selected candidate cannot be blamed for administrative delay inasmuch as only on completion of the process, an applicant move into the category of selected candidate.

III. Seniority cannot be claimed from a date, when the incumbent is yet to borne in the cadre.

IV. Inter-se-seniority already based on **N.R. Parmar** (Supra), are to be protected and the decision in **K. Meghchandra** (supra) shall apply prospectively, except where seniority is to be fixed under relevant rules from the date of vacancy/date of advertisement.

21. As the bone of contention relates to the impugned screening committee decision dated 11.06.2020, the relevant portion of the same is quoted herein below:-

“3.. Observations: As per the existing Inter-se-seniority lists on the basis of 'Post Based Roster' the committee has observed that the clear vacant posts were available against direct recruitment quota in the vacancy year 2013; and the principles of determination of Inter-se-seniority of direct recruits and promotees on the basis of vacancy year has been made effective by the DoPT from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515 in the case of N.R.Parmar –Vs- UOI & Ors. As such direct recruits (through LDCE) of the 2017 and the 2019 batches are deemed/construed to be recruited against the vacancy year 2013. Therefore, the provisional Inter-se-seniority list issued vide No. Estt(A)-31/2017/9127 dtd Itanagar the 4th Nov' 2019 by the Secretariat Administration Department with due concurrence of the A.R. Department and the advice of Law Department is found to be in conformity to the Supreme Court verdict in Civil Appeal No. 7514-7515/2005 in the case of N. R. Parmar –Vs- UOI & Ors and also in conformity with Office memorandum on Inter-se-seniority of direct recruits and prmotees instructions thereof issued by the DoPT vide No. 200011/1/2012-Estt.(D) dated 4th March, 2014”.

22. **K. Meghchandra** (supra), judgment was delivered on 19.11.2019 and therefore, the said judgment shall be made applicable from 19.11.2019. Only those seniority determined already, on the basis of **N.R. Parmar** (Supra), prior to 19.11.2019 is not be disturbed in terms of the judgment of **K. Meghchandra** (supra) subject to the condition that the rule prescribes the date of effect of promotion to be the date of vacancy/date of advertisement. In the case in hand, there is no prescription under the rule, that the seniority is to be fixed from the date of vacancy/date of advertisement, rather the rule is absolutely silent in the present case. Further, in the case in hand, the Departmental Screening Committee meeting was held on 11.06.2020 and therefore, on that date, the seniority could not have been determined in terms of **N.R. Parmar** (Supra) judgment in view of principle laid down in **K. Meghchandra** (supra) overruling **N.R. Parmar** (Supra). Accordingly, on this count alone, the determination made by the screening committee is fallacious and is not sustainable under law.

23. Now coming to the Office Memorandum dated 13.08.2021 which was issued in terms of the determination made in **K. Meghchandra** (supra) case and such office memorandum was issued pursuant to determination made by the Departmental Screening Committee on 11.06.2020.
24. The Office Memorandum dated 13th August, 2021 issued by the Under Secretary to the Government of India relied on by the respondents, no doubt, clearly stipulates that the old cases are not be re-opened. Though a stand has been taken by Mr. Tara, learned counsel that in terms of this Office Memorandum, and in absence of challenge to such office memorandum, the determination of the State respondents cannot be interfered, however, such argument donot find favour of this Court. The Office Memorandum dated 13.08.2021, though, provides that Inter-se-seniority of direct recruits and promotees already decided in terms of the Office Memorandum dated 04.03.2014 shall not be disturbed and that the old cases are not to be re-opened, such Office Memorandum is to be read in terms of the determination made by the Hon'ble Apex Court in **K. Meghchandra** (supra) along with Office Memorandum dated 08.10.2021, whereby a direction was issued to adhere to the Office Memorandum dated 13.08.2021 in terms of **K. Meghchandra** (supra). Therefore, "old cases" shall mean the cases, which were already settled and decided prior to 19.11.2019. Infact, the Office Memorandum dated 13.08.2021 was also given effect from 19.11.2019 i.e. the date of pronouncement of judgment of **K. Meghchandra** (supra) and therefore, want of challenge to such Office Memorandum shall not have any relevance in determination off the issues in hand. Accordingly, the issue No. I, is answered to the effect that the decision of the screening committee dated 11.06.2020 is not sustainable under law being in derogation of the decision rendered in **K. Meghchandra** (supra).
25. The seniority position, on the basis of date of entry into the cadre of Section Officer of the petitioners vis-a-vis the respondent Nos. 3 to 7, on the basis of the impugned seniority list are recorded herein below in a tabular form:-

Seniority position in the impugned list as on 24.06.2020.	Petitioner/respondent	Date of entry into the cadre.
37	Sri Larjum Doye (Petitioner)	07.11.2013
40	Sri Y. Taggu (Mize) (Petitioner)	12.01.2016
27	Shri P.K.Pal (Respondent No. 3)	08.08.2017
29	Shri Toli Karga (Respondent No. 4)	08.08.2017
31	Sri Nabam Kameng (Respondent No. 5)	08.08.2017
33	Sri Renyak Tato (Respondent No. 6)	08.08.2017
35	Ms. Bobita Chowlu (Respondent No. 7)	15.03.2019

26. However, the respondent Nos. 3 to 7 were placed at SL. No. 27 to 35 in the impugned seniority list dated 24.06.2020 and the petitioner namely Larjum Doye was placed at SL. No. 37 and the petitioner namely, Y. Taggu Mize was placed at SL. No. 40 of the said seniority list, though this two petitioners admittedly entered into the cadre of Section Officer on 07.11.2013 and 12.11.2016, whereas, the respondent Nos. 3 to 6 entered the cadre of Section Officer on 08.08.2017 and the respondent No. 3 on 15.03.2019.

27. From the table given hereinabove, it is an admitted position that when the petitioners entered into the cadre of Section Office on promotion, the respondents were not even borne to the cadre and therefore, on this count alone, the impugned decision dated 11.06.2020 and the impugned Final Inter-se-seniority list dated 24.06.2020 is liable to be struck down. Accordingly, the issue No. II is answered.
28. The issue No. III should not detained the Court any further in view of the determination made and ratio laid down by the Hon'ble Apex Court in **Akhilesh Prasad –Vs- Jharkhand Public Service Commission and ors** reported in **2022 SCC Online SC 510**. In the aforesaid case, amongst other the nature and character of appointment to senior positions through Limited Departmental Competitive Examination was dealt and determined.
29. A learned Single Judge of Jharkhand High Court in WP(S) No. 3480/2018 (**Akhilesh Prasad –Vs- Jharkhand Public Service Commission and ors**), had held that limited departmental examination is not a general open competitive examination rather it is open for in service candidates of Government of Jharkhand only. Thus, it is in continuation of his earlier service.
30. Such determination was interfered by a Division Bench of Jharkhand High Court and the petitioner Akhilesh Prasad took the challenge to the Hon'ble Apex Court.
31. The determination of the learned Single Judge was taken note by the Hon'ble Apex Court in **Akhilesh Prasad** (supra) and Hon'ble Apex Court quoted the same in its judgment at paragraph 9 which is quoted herein below:-.

“8. The aforesaid provision makes it abundantly clear that so far as the limited examination of the State of Jharkhand is concerned, the benefit of reservation may be extended to such candidates also, who are born on the reserved category post under the unified State of Bihar. The appointment to the post of Deputy collector may be a fresh appointment, but the process of the said appointment has to be seen. This examination is not a general open competitive

examination rather it is open for in service candidates of Government of Jharkhand only. Thus, the persons who are not employed under the State of Jharkhand, are not entitled to appear in the said examination. That means only a Government employee is entitled to appear in the said examination. The said employee, if succeeds in the examination and is appointed on the post of Deputy Collector, his past services with the State are also counted for all purposes. Thus, it is in continuation of his earlier service. In the case in hand, the petitioner was already working in the co-operative Department as a reserved category candidate and thereafter by virtue of his employment in the Cooperative Department under the State of Jharkhand, he qualified to appear in the examination. Admittedly he is a reserved category Scheduled tribe candidate and after bifurcation of the State he was allocated the Jharkhand cadre. He carried his reserved category with him after bifurcation also. Thus, the Resolution number 4722 dated 14.08.2008 applies to the Petitioner. The State acknowledges the petitioner as Scheduled Tribe category while he is working in Co-operative Department under the State, but not treating him as reserved category i.e. scheduled tribe for the purpose of limited examination, is not acceptable to this Court neither his tenable in the eyes of law. The appointed cannot be said to be a fresh appointment. The petitioner, after reorganization of the State, was allocated the Jharkhand State cadre as a Scheduled Tribe candidate. Thus, his status as Scheduled Tribe candidate for the purpose of service has to be maintained. Thus, the claim of the Respondents that the Petitioner cannot be treated as a scheduled tribe candidate is not tenable in the eyes of law. Similar view has been reiterated by this Court in W.P. (s)No.488 of 2013. The reliance has been placed by the Respondents on the judgment delivered by this Court in Division Bench is of no help to them as they were on different ground and the present case is not a case of submission of certificate after the cut-off date.

32. Such decision of the learned Single Judge was reversed by the Division Bench of Hon'ble Jharkhand High Court. The Hon'ble Apex Court at Paragraph 19 decided to deal with the issue of the nature of limited departmental examination

and what it seeks to achieve as against direct recruitment from the open market, where a person who was not part of the concerned service, gets a chance to offer his candidature and enter the service under a State for the first time. In this regard, the Hon'ble Apex Court held in **Akhilesh Prasad** (supra) that limited departmental examination efforts an opportunity for persons who are already in service at a lower level to have accelerated promotion depending upon merit of such candidates.

33. At paragraph 20, it was held that by nature, the promotion to the next higher level is from and amongst those who are at a lower level in the service. Such avenue of promotion is not available to persons from the open market, where talent is to be garnered through direct recruitment. The promotion as a channel to reach the higher level is only available to the persons already belonging to the service. In normal circumstances, according to the Hon'ble Apex Court, the promotion would go by the concept of merit linked with seniority subject to suitability and in order to encourage meritorious candidates who may be comparatively junior in service, a window of opportunity is opened through limited departmental examination. Those who passed the examination are entitled to have an accelerated promotion and this process does not change the character of movement to the higher post and it continues to be a promotional channel. Accordingly, it was held that the Single Judge of the Jharkhand High Court was right in allowing the writ petition. It was further held that the determination made by the Single Judge as regards the nature of departmental examination was correct and accordingly, the decision of the Division Bench of the Jharkhand High Court which held that the limited departmental examination was nothing but direct recruitment from the open market was declared by the Hon'ble Apex Court to be not justified.

34. Therefore, in the aforesaid background and settled proposition of law, it is held that the limited departmental examination through which the respondent Nos. 3 to 7 were promoted cannot be treated as direct recruitment and the same does

not change the character of movement to the higher post and it continues to be promotional channel. The issue No. III is answered accordingly.

35. In view of the determination made hereinabove, the present writ petitions are allowed by setting aside and quashing of the decision of the impugned Departmental Screening Committee meeting dated 11.06.2020 and the final Inter-se-seniority select list dated 24.06.2020. The respondents are directed to prepare a final select list in terms of the determination made hereinabove. The Department may also publish a draft selection list on the basis of determination made hereinabove to give an opportunity to all the members of the cadre who found their place in the impugned seniority list. The entire exercise be carried out within a period of two months from the date of receipt of a certified copy of this order to be furnished by the petitioners.
36. The writ petitions stands allowed in the aforesaid terms. The parties to bear their own cost.

JUDGE

Comparing Assistant