

CASE NO.:
Appeal (civil) 2084 of 2003

PETITIONER:
Union of India and Ors.

RESPONDENT:
Capt. Satendra Kumar

DATE OF JUDGMENT: 18/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

Challenge in this appeal is to the legality of the judgment rendered by a Division Bench of the Allahabad High Court holding that the respondent is entitled to be re-instated and is to be given time upto 9.6.2004 to pass the Part B examination.

The background facts in a nutshell are as under:

Respondent was commissioned on 9.6.1984 as an Officer in the Indian Army. In terms of Rule 13-A of the Army Rules, 1954 (in short the 'Rules') read with para 79 of the Defence Service Regulations (in short the 'Regulations') all commissioned officers were required to pass, in terms of the existing rules, the promotional examination (Part B) within 13 years of reckonable service. Thereafter, they were required to pass Part D examination for promotion within 20 years.

The respondent making apparently wrong and erroneous representation that he had completed Part B course and had passed, applied for next promotional Part D examination without indicating correct particulars regarding the results of Part B examination in the application form. When the authorities found that he was not eligible, his result in Part D examination was declared to be void. Since the respondent had not completed Part B examination as per the existing rules and Special Army Instructions a show cause notice was issued in terms of Rule 13-A of the Rules. Respondent replied to the show cause notice and made a statutory complaint. While the matter was pending, on 8.1.1998 the respondent was awarded severe dis-pleasure (non-recordable) for filing false application form for Part D examination. This was, however, un-connected with the show cause notice issued earlier under Rule 13-A. On 20.8.1999 the Government of India amended Army Instructions whereby the time limit for completing the examination was extended from 13 years to 20 years. It was however made applicable with effect from 24.4.1998. On 5.7.2000 the appellant communicated its decision not to retain the respondent in service as he had failed to qualify in Part B examination within the prescribed time limit. On receipt of the order in question which permitted the respondent to make a representation, if any, within 15 days, the respondent made a representation on 2.8.2000. On 21.9.2001 order was passed retiring the respondent from service in terms of Section 19 of

the Army Act, 1950 (in short the 'Act') read with Rule 13-A of the Rules.

Respondent filed a Writ Petition before the Allahabad High Court challenging the order dated 5.7.2000. The primary stand was that by the time the order was passed, period for passing the examination was extended upto 20 years and, therefore, he had time till 9.6.2004 to pass the examination in question. The present appellants pointed out that by the time the amendment was made the period of 13 years prescribed under the Army Instructions was already over and in any event the amendment was operative with effect from 24.4.1998 and was not applicable to the respondent.

The High Court, however, was of the view that when the impugned order of voluntary retirement was passed in September, 2001 the period had been amended from 13 years to 20 years and, therefore, the respondent was entitled to re-instatement.

Learned counsel for the appellants submitted that the High Court clearly erred in holding that the amendment was applicable to the respondent. By the time the amendment was introduced the period of 13 years originally stipulated was over so far as the respondent is concerned and in any event the amendment was made specifically operative with effect from 24.4.1998 and was clearly inapplicable to the respondent. No one appears for the respondent.

We find that the High Court's approach is clearly untenable. The relevant Rule and the instructions read as follows:

"Promotion Examination Part B(Lt. to Captain)

As per SAI 1/S/85 amended vide SAI/26/S/89:

15(a) Promotion Examination Part B. Officers who fail to qualify in Promotion Examination Part B till completion of 13 years reckonable service for officers commissioned before 31 July 1984 and 11 years reckonable service in the case of officers commissioned on or after 31st July, 1984 will be issued a show cause notice under AR 13-A for termination of service. The services of these officers will be terminated as per the provisions contained in Army Rule 13-A."

Rule 13-A. Termination of Service of an officer by the Central Government on his failure to qualify at an examination or course (1) when an officer does not appear at or, having appeared fails to qualify at the retention examination or promotion examination or any other basic course or examination within the time or extended time specified in respect of that examination or course, the Chief of the Army Staff (or the Military Secretary) shall call upon the officer to show cause why he should not be compulsorily retired or removed from the service.

(2) In the event of the explanation being considered by the Chief of the Army Staff (or the Military Secretary) to be unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendations of the Chief of the Army Staff (or the Military Secretary) as to whether the officer should be-

(a) called upon to retire; or

(b) called upon to resign.

(3) The Central Government, after considering the explanation if any, of the officer and the recommendation of the Chief of the Army Staff (or the Military Secretary), may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him."

So far as the amendment to the Army Instructions and Regulations are concerned, the amended Army Instructions issued on 20th August, 1999 were applicable with effect from 24.4.1998. That is clearly indicated in the amended instructions issued on 20th August, 1999. The President had sanctioned the amendment to be operative from 24.4.1998. By the time the amendment came into effect, the 13 years period which was available to the respondent to pass Part B examination was over. The notice regarding non success in the examination within the stipulated time had also been given to the respondent on 11.9.1997. Merely because the final order was passed on 21.9.2001 that did not change the position so far as the respondent is concerned. The High Court is, therefore, clearly in error in holding that the extended period of 20 years was applicable to the respondent. The High Court's order is indefensible and is set aside. The appeal is allowed. No costs.