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**(2002) 03 AHC CK 0066**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 37551 of 2001**

Capt. Satendra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 07-03-2002

**Acts Referred:**

Army Rules, 1954 — Rule 13A

**Citation :** (2002) 2 AWC 1293 : (2002) 93 FLR 555

**Hon'ble Judges :** R. Tiwari, J; M. Katju, J

**Bench :** Division Bench

**Advocate :** B.N. Agrawal, Sanjay Agarwal, S.C. Budhwar and V. Budhwar, for the Appellant; Sandeep Saxena, S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Katju and R. Tiwari, JJ.—Heard Sri S. C. Budhwar, learned senior counsel, Sri V. Budhwar learned counsel for the petitioner and Sri Sandeep Saxena, learned counsel for the respondents.

2. The petitioner has challenged the impugned order dated 21.9.2001 (Annexure-13 to the writ petition) by which the petitioner has been compulsorily retired from the Army. The petitioner has also challenged the impugned order dated 4.11.2001 (Annexure-14 to the writ petition).

3. The petitioner was a Captain in the Indian Army and during his service, he received a show cause notice dated 11.9.1997 (Annexure-1 to the writ petition). By this impugned notice, he was asked to show cause why his service be not terminated or submit his voluntary retirement under Rule 13 (A) of the Army Rules. Thereafter, respondent No. 1 has sent another show cause notice dated 5.7.2000 (Annexure-9 to the writ petition) by which the petitioner was asked to submit papers either for retirement or resignation. The petitioner sent his reply/representation dated 2.8.2000 vide (Annexure-10 to the writ petition). Thereafter the impugned order dated 21.9.2001 vide (Annexure-12 to the writ

petition) was passed by which the petitioner has been retired from service vide (Annexure-13 to the writ petition). Aggrieved by this impugned order, the petitioner has filed the present writ petition before this Court.

4. Rule 13A of the Army Rules, 1954, states as follows :

"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 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 recommendation 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.)"

5. A perusal of the above Rule, shows that an officer who has not passed 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 can be called upon for voluntary retirement or resignation.

6. The time for passing the aforesaid examination was earlier 13 years from the date of being commissioned. However, this period subsequently has been changed from 13 to 20 years by order dated 20.8.1999 retrospectively from the date 24.4.1998. The petitioner has, admittedly been commissioned in the Indian Army on 9.6.1984 and the impugned order of voluntary retirement has been passed on 21.9.2001. Thus, before impugned order could be passed the period for passing the aforesaid examination was increased from 13 years to 20 years. Thus, the petitioner had upto 9.6.2004 time to pass the aforesaid examination. Thus, the impugned order dated 21.9.2001 proceeds on the misconception that the period of passing the examination is still 13 years. Thus, the very basis of the impugned order was wrong, and hence the impugned order is clearly arbitrary and in violation of the Special Army Instruction dated 24.8.2001 (Annexure-11 to the writ petition).

7. In view of the above, this writ petition is allowed and the Impugned orders dated 21.9.2001 and dated 4.11.2001 (Annexures-13 and 14 to the writ petition)

are hereby quashed. The petitioner shall be reinstated forthwith in the Indian Army. It is made clear, however, that the petitioner must pass the aforesaid examination by 9..6.2004, otherwise the petitioner''s service will liable to be terminated under Rule 13A of the Army Rules.