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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18 December 2025

Pronounced on: 9 March 2026

+ W.P.(C) 3427/2023 & CM APPL. 13237/2023

GHUNNA RAM

.....Petitioner

Through: Mr. Avinash K Sharma, Mr. Ankur Vyas and Mr. R Abhishek and Ms. Garima Joshi, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Ravinder Agarwal, Manish Kumar Singh, Vasu Agarwal, Lekh Raj Singh, Advocates for UPSC
Mr. Ankit Siwach, Adv. with Mr. Naginder Benipal, SPC with UOI
Major Anish Muralidhar Army
Insp Athurv and Mr. Ramniwas Yadav, CRPF

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT

09.03.2026

C. HARI SHANKAR, J.

A. Facts

I. Uncontested facts



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1. The petitioner joined the Indian Army¹ as Sepoy on 28 August 2004. He was promoted as Havildar Major (Technical) on 27 September 2015. At the time of his promotion, he had executed a five year bond with the Army, which was discharged on 27 September 2020.
2. *Vide* letter dated 14 March 2019, the Ministry of Home Affairs² nominated the Central Reserve Police Force³ as the nodal force to conduct a Physical Standard Test⁴, Physical Efficiency Test⁵ and Medical Standard Test⁶ of candidates who qualified the written test forming part of the CAPFs⁷ (AC⁸s) Examination 2019⁹ for recruitment to the post of AC in the CAPFs¹⁰.
3. The examination was to consist of a written test followed by PST/PET followed by MST, followed by interview/personality test.
4. On 15 April 2019, the commanding officer of the petitioner issued “a Form of Certificate for Serving Personnel¹¹”, below which the petitioner subscribed to an undertaking, pertaining to the 2019 examination. The Certificate and Undertaking read thus:

¹ “the Army” hereinafter

² “MHA” hereinafter

³ “CRPF” hereinafter

⁴ “PST” hereinafter

⁵ “PET” hereinafter

⁶ “MST” hereinafter

⁷ Central Armed Police Forces

⁸ Assistant Commandant

⁹ “the examination” hereinafter

¹⁰ “CAPFs” hereinafter

¹¹ “the Serving Personnel Certificate” hereinafter



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“FORM OF CERTIFICATE FOR SERVING PERSONNEL

(Applicable for serving personnel who are due to be released within one year)

I hereby certify that, according to the information available with me No. 14672122N Rank HMT Name Ghunna Ram is serving in the Army from 28 Aug 2004 and is due to complete the specified term of his engagement with the Armed Force on the date 31 Dec 2020.

Sd/-
Commanding Officer

Place: C/o 56 APO
Date: 15 Apr 2019

Candidate furnished certificate as above will have to give the following undertaking:-

UNDERTAKING TO BE GIVEN BY THE CANDIDATE

I, understand that if selected on the basis of the recruitment/ Examination to which this application relates, my appointment will be subject to my producing documentary evidence to the satisfaction of the appointing authority that I have been duly released/ retired/ discharged from Armed Forces and that I am entitled to the benefits admissible to ex-servicemen in term of the Ex-servicemen (Re-employment in Central Civil Service and Posts) Rule, 1979, as amended from time to time.

Sd/-
Signature of candidates

Place: C/o 56 APO
Date: 12 Apr 2019”

5. *Vide* notification dated 24 April 2019, the Union Public Service Commission¹² notified the 2019 CAPFs (Acs) examination.

6. The petitioner applied as an Ex-Serviceman¹³. He cleared the written test, the PST/ PET and the MST and was called for interview.

¹² “UPSC” hereinafter

¹³ “ESM” hereinafter



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7. Thus far, the parties before us are *ad idem* on the facts.

II. Stand of the petitioner in the writ petition

8. According to the petitioner, on or around 6 November 2019, the bag which contained all his documents was stolen. This resulted in considerable mental anguish to the petitioner. As a result, though the petitioner lodged a First Information Report¹⁴ on 6 November 2019 with the Police authorities, regarding the theft of his bag and the documents contained therein, the petitioner, instead of stating that the Serving Personnel Certificate issued by the Commanding Officer had been stolen, mistakenly stated that his ESM ID had been stolen.

9. On 5 February 2021, the results of the written test were declared by the UPSC. The petitioner was among the successful candidates.

10. Having come to know that he had qualified in the written test, the petitioner, on the very next day, i.e. 6 February 2021, applied for discharge from the Army. The petitioner's case was recommended by the Army in March 2021.

11. According to the petitioner, his discharge from the Army was delayed on account of the intervening COVID-19 pandemic. On 5 October 2021, a list of candidates who could be permitted discharge from army service on compassionate grounds in March 2022 was released by the Army. The petitioner's name figured in the list.

¹⁴ "FIR" hereinafter



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Ultimately, the petitioner was discharged from the Army on 31 March 2022.

12. In the interregnum, on 17 August 2021, the UPSC addressed a detailed communication to the petitioner, levelling the following allegations:

(i) The petitioner had, by earlier communications dated 16 March 2021, 20 May 2021 and 29 June 2021 of the UPSC, been requested to submit Proforma IV, but had failed to do so.

(ii) 10% of vacancies following the 2019 examination were earmarked for ESM, as per the MHA Notification dated 24 April 2019 whereby the examination was notified. “Ex-serviceman” was defined in the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979¹⁵. The 1979 Rules had been amended by the Ex-servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012¹⁶, notified by the DOPT on 4 October 2012. Rule 5(c) of the 1979 Rules as amended in 2012, read thus:

“For appointment to any vacancy in Group ‘A’ and Group ‘B’ services or posts filled by direct recruitment on the results of an All India Competitive Examination, the Ex-servicemen and Commissioned Officers including Emergency Commissioned Officers or Short Service Commissioned Officers who have rendered at least five years military services and have been released –,(i) on completion of assignment (including those whose assignment is due to be completed within one year) otherwise than by way of dismissal or discharge on account

¹⁵ “The 1979 Rules”, hereinafter

¹⁶ “The 2012 Amendment Rules”, hereinafter



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of misconduct or inefficiency.”

The period of one year, for reckoning the completion of the assignment with the Armed Forces, of the candidate, as envisaged by Rule 5(c), was required to be reckoned from the last date for submission of the application. The last date for the submission of the application being 20 May 2019, the ESM was required to have been released/discharged from the Armed Forces on or before 19 May 2020. No such decision had been taken by the Army in respect of the petitioner by the said date. The petitioner’s candidature, therefore, *ipso facto* stood disqualified by operation of Rule 5(c)(i) of the 1979 Rules as amended in 2012.

(iii) At the time of undergoing the PET/PST, the petitioner had stated that he had lost his Discharge Certificate on 6 November 2019 and also tendered the FIR lodged by him on the said date. This was obviously untrue, as the petitioner had, by 6 November 2019, not yet been discharged from the Army.

(iv) In para 9(i) of the Detailed Application Form¹⁷, submitted by the petitioner while applying for participating in the 2019 examination, the petitioner had stated that he was an ESM. In para 11(i) of the same Form, however, he stated that he had never been employed. These statements were contradictory.

(v) The petitioner’s candidature additionally, therefore, stood

¹⁷ “DAF” hereinafter



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disqualified as he had made false submissions and suppressed information.

The petitioner was, therefore, directed to show cause as to why his candidature be not cancelled under Rule 14 of the CAPF (ACs) Examination 2019 Rules¹⁸.

13. The petitioner replied to the aforesaid communication of the UPSC on 24 August 2021. With respect to the various allegations/queries contained in the letter of the UPSC, the petitioner submitted that (i) the Army had, *vide* its NOC dated 15 April 2019, clearly stated that the petitioner could be released/discharged after 31 December 2020 as, by then, his assignment with the Army would be over, (ii) the delay in discharge/release of the petitioner by the Army was only due to the COVID pandemic and the then existing stay on voluntary retirements, (iii) after his bag had been stolen, the petitioner had, in his FIR, mistakenly referred to the document which was lodged as his ESM ID, instead of the Serving Personnel Certificate, (iv) para 9(i) of the DAF provided, against the query requiring the candidate to declare whether he was, or was not, an ESM, only two options, “yes” and “no”, and the petitioner clicked “yes” in view of the undertaking/certificate dated 15 April 2019, (v) the petitioner stated that he had never been employed earlier, as he had never been employed in the CAPFs at any prior point of time, (vi) however, the petitioner provided all details of the medals and encomiums earned by him in the Army, so that no suppression could be alleged, and (vii) the interpretation being placed by the MHA on Rule 5(c) of the 1979

¹⁸ “the 2019 Rules”, hereinafter



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Rules as amended in 2012 was incorrect. Additionally, the petitioner points out, in the writ petition, that Proforma IV had already been submitted by him, and the earlier communications from the UPSC to the petitioner were to submit his ESM Discharge Book. In these circumstances, the petitioner requested that no coercive action be taken against him.

14. There was no response to the aforesaid communication from the UPSC.

15. The petitioner was discharged from the Army on 31 March 2022.

16. The UPSC released the revised results twice; firstly, on 5 September 2022 and later on 19 January 2023. The petitioner's name was not figuring in the list of successful candidates. Rather, a Scheduled Tribe candidate was recommended for appointment in his place.

17. It is in these circumstances that the petitioner has approached this Court by means of the present writ petition, praying that the cancellation of his candidature in the ESM category for recruitment as AC, following the 2019 examination, be quashed and set aside and that he be appointed as AC in the BSF in the ESM quota.

18. Counter-affidavits have been filed by the DOPT, the UPSC and the CRPF. The counter-affidavit of the CRPF merely adopts the averments in the counter-affidavits of the UPSC and the DOPT. The



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petitioner has also filed rejoinders to the counter-affidavits of the UPSC and the DOPT.

III. Counter-affidavit by UPSC

19. The UPSC, in its counter-affidavit, has re-asserted Rule 5(c) of the 1979 Rules as amended in 2012. It is submitted that the period of one year, under Rule 5(c), has necessarily to be reckoned from the last date for submission of applications for participation in the examination. The said clause, it is pointed out, is not under challenge and the petitioner is bound thereby. Reliance is placed on the undertaking accompanying the applications submitted by the petitioner at the time of applying for participation in the examination, agreeing that the appointment would be subject to production of documentary evidence by him, to the satisfaction of the Appointing Authority, that he had been released/retired/discharged from the Armed Forces.

20. The UPSC further submits that the ESM status of the petitioner could not be verified at the time of scrutiny of his DAF, as the supporting documents had not been uploaded by him. Instead, the petitioner uploaded an FIR dated 6 November 2019, which purported to state that the documents had been stolen. The original documents, which were submitted by the petitioner after he had qualified the PST/PET and the MST, and was appearing for interview on 11 November 2020 included the Serving Personnel Certificate issued by the Commandant, which clearly stated that the petitioner's engagement with the Army was coming to an end only on 31



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December 2020. Rule 5(c) of the 1979 Rules, as amended in 2012, required the candidate to be discharged from the Armed Forces within a year of the last date for submission of the application, i.e., on or before 19 May 2020. As the petitioner was completing his engagement with the Army only on 31 December 2020, he was not eligible for the post of AC.

IV. Counter-affidavit of DOPT

21. The DOPT, in its counter-affidavit, has echoed the stand of the UPSC insofar as the interpretation of Rule 5(c)(i) of the 1979 Rules is concerned, and has stated that the candidate was required to be released/discharged from the Armed Forces mandatorily on or before 19 May 2020. Reliance has been placed on paras 23 and 24 of the judgment of a Division Bench of this Court in *Mukesh Kumar v. UOI*¹⁹ which, it is stated, involved an identical issue.

22. The UPSC also relies on DOPT OM dated 3 April 1991, the opening paragraph of which reads as under:

“The undersigned is directed to refer to the explanation below Rule 2 (c) of the Ex-Servicemen (Re-employment in Central Civil Services and Posts Rules, 1979 and the Notification of Personnel and Training Department No. 36034/5/85-Estt.(SC), dated 27.10.1986, according to which officials, who are working in Armed Forces and would come under Ex-Servicemen category after their retirement are permitted to apply for the re-employment, a year before their completing the prescribed period. The matter of applying uniform procedure for accepting the status of Ex-Servicemen for such employees as are working in Armed Forces Service and applying for civil posts on Reemployment basis, has been under consideration in this Department for some time. It has

¹⁹ 2020 SCC OnLine Del 1908



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now been decided that in accordance with the above "clarification", a candidate working in Armed Forces would become eligible for applying civil posts only when he completes the prescribed period of Army Service within a year *from the last date for receiving application in connection with Special Recruitment/Examination, etc., prescribed by the Competent Authority.*"

(Emphasis supplied)

23. It was only consequent to the observations and directions contained in the judgment in ***Mukesh Kumar***, submits the DOPT, that the OM dated 3 April 1991 was amended by adding a proviso in Para 3 of the OM dated 27 February 2023. The OM, after addition of the proviso, reads as under:

“Candidate working in Armed Forces would become eligible for applying civil posts only when he completes the prescribed period of Armed Forces Service within a year from the last date for receiving application in connection with Special Recruitment/ Examination, etc., prescribed by the Competent Authority.

Provided when selection process takes more than one year, from the last date of receiving of applications, the candidate will not be declared ineligible under Ex-servicemen category only on the ground that he has got himself released from Armed Forces after one year from the last date of receiving application.”

24. In tune with the OM dated 27 February 2023, a revised Proforma IV and undertaking were also provided. It is submitted that the OM was not in existence at the time when the petitioner filled the application form and that he cannot, therefore, seek to derive the benefit thereof.

V. Petitioner’s rejoinder to UPSC

25. The petitioner, in his rejoinder to the UPSC, questioned the correctness of the manner in which Rule 5(c) was being interpreted by



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the UPSC and by the DOPT. The petitioner submitted that Rule 5(c) commenced with the words “for appointment”, and referred to “direct recruitment on the results of the AICE”. In other words, submitted the petitioner, the earliest date, from which the period of one year for the purposes of Rule 5(c) could be reckoned, could only be the date of declaration of the results.

26. It was submitted that any other interpretation would lead to an incongruous consequence in the event of discharge of the candidate from the Armed Forces predating the announcement of the results, by the UPSC, of the CAPF (ACs) examination. In case the candidate did not qualify the Examination, he would be left neither with his job in the Armed Forces nor with the job for which he aspired while undertaking the Examination. Rule 5(c), it was submitted, could never be intended to result in such an iniquitous and unhappy outcome.

VI. Petitioner’s rejoinder to DOPT

27. Responding to the counter affidavit of the DOPT, the petitioner submitted that the decision in *Mukesh Kumar* proceeded on a concession, as it specifically noted that the petitioner before this Court did not controvert the stand that the period of one year under Rule 5(c) of the 1979 Rules was required to be computed from the last date for submission of the application. The petitioner, on the other hand, was seriously disputing the correctness of this interpretation.

28. Apropos the DOPT OM dated 3 April 1991, the petitioner



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submitted that (i) once the 1979 Rules had been amended on 4 October 2012, the DOPT OM dated 3 April 1991, which was issued prior to the amendment of the 1979 Rules, ceased to have any relevance, (iii) prior to the 2012 amendment, Rule 2(c) of the 1979 Rules required ESMs to apply for re-employment one year before completion of their engagement with the armed forces, (iv) on the other hand, the 2012 amendment amended Rule 5 of the 1979 Rules to include recruitment in Group-A and Group-B of the CAPF through the AICE and (v) a similar view had been taken by the Division Bench of this Court in *Mukesh Kumar*.

VII. Submissions before this Court

29. During oral arguments before us, learned Counsel have more or less reiterated the aforesaid submissions.

30. Additionally, Mr. Avinash, appearing for the petitioner, submits that his client had applied for discharge from the Army on 6 February 2021, and his case for discharge had also been recommended by the Army in March 2021 itself. The delay in discharge of the petitioner was attributable to the Army – albeit due to the COVID pandemic. Had the Army discharged the petitioner in time, he could have joined the CAPFs.

31. Moreover, submits Mr. Avinash, the parentheses in Rule 5(c) of the 1979 Rules uses the words “due to be completed”, and not “completed”. There is no dispute that the petitioner’s assignment with the Army was due to be completed on 31 December 2020. The actual



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date of completion was irrelevant.

32. Mr. Ravinder Agrawal, appearing for the UPSC, additionally places reliance on Note II under the head “Eligibility Conditions” in the UPSC Notification dated 24 April 2019 notifying the Examination, which reads:

“Note II: The term Ex-Servicemen will apply to the persons who are defined as Ex-Servicemen in the Ex-Servicemen (Re-employment in Civil Services and Posts) Rules, 1979, as amended from time to time.”

Mr. Agarwal reads, with this Note, the following definition of “ex serviceman” in the 1979 Rules as amended in 2012:

- “(c) An ‘ex-serviceman’ means a person –
- (i) who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union, and
 - (a) who either has been retired or relieved or discharged from such service whether at his own request or being relieved by the employer after earning his or her pension; or
 - (b) who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or
 - (c) who has been released from such service as a result of reduction in establishment;

or

 - (ii) who has been released from such service after completing the specific period of engagement, otherwise than at his own request, or by way of dismissal, or discharge on account of misconduct or inefficiency and has been given a gratuity; and includes personnel of the Territorial Army, namely, pension holders for continuous embodied service or broken spells of qualifying service;



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OR

(iii) personnel of the Army Postal Service who are part of Regular Army and retired from the Army Postal Service without reversion to their parent service with pension, or are released from the Army Postal service on medical grounds attributable to or aggravated by military service or circumstance beyond their control and awarded medical or other disability pension;

OR

(iv) Personnel, who were on deputation in Army Postal Service for more than six months prior to the 14th April, 1987;

OR

(v) Gallantry award winners of the Armed forces including personnel of Territorial Army;

OR

(vi) Ex-recruits boarded out or relieved on medical ground and granted medical disability pension.”

33. Mr. Agrawal further relies on the DOPT OM dated 3 April 1991, already cited *supra*. He finally draws attention to the “Compendium on Reservation, Concessions and Relaxations for Ex-Servicemen in Central Government Services” circulated by the DOPT under OM dated 25 February 2014, which, referencing the DOPT OM dated 3 April 1991, states thus:

“A candidate working in Armed Forces would become eligible for applying civil posts only when he completes the prescribed period of Army Service within a year from the last date for receiving application in connection with Special Recruitment/Examination, etc. prescribed by the competent authority. The pro-forma of the certificate to be submitted along with the application form is given O.M. No.36034/2/91-Estt (Res) dated 3rd April, 1991. Since the appointment of such a candidate is subject to his submitting documentary evidence that he has been duly released/retired/discharged from the Armed Forces and qualified as an Ex-Servicemen, such a candidate shall be required to submit along with his application an undertaking duly signed by him in the format as mentioned in (O.M. 36034/2/91-Estt(Res) dated 3rd April, 1991.”



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B. Analysis

34. The dispute substantially pivots around Rule 5(c) of the 1979 Rules as amended in 2012, though the UPSC has also sought to defend the cancellation of the candidature of the petitioner on the ground that he had misstated facts and suppressed material.

35. Both sides relied, before us, on *Mukesh Kumar*, rendered by a Division Bench of this Court. The facts, and the dispute before the Court, were nearly identical to those before us. That decision cannot, however, be of any substantial precedential value, as the interpretation placed by the UPSC on Rule 5(c)(i) of the 1979 Rules as amended in 2012 was not controverted by the petitioner Mukesh Kumar. This is specifically noted in para 13 of the report:

“13. We are unable to agree. The aforesaid Rule only defines an ‘ex-serviceman’ for the purposes of Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules but does not provide the date on which the applicant should qualify as an ex-serviceman. *The counsel for the petitioner has not controverted the plea and contention of the counsel for the respondents UPSC, of the cut-off date in the present case being of one year from 21st May, 2018.* The petitioner was thus required to be an ex-serviceman within one year of 21st May, 2018. The contention of the petitioner in this regard is, that since he was to complete 15 years of service within one year of 21st May, 2018 and whereafter he could have sought release from the India Army at any time, he so qualified. However the Rule aforesaid relied upon by the counsel for the petitioner, does not provide so.”

(Emphasis supplied)

*Kulwant Kaur v. Gurdial Singh Mann*²⁰ clearly holds that a decision which proceeds on a concession, which is accepted by the Court, has no precedential value whatsoever:

²⁰ (2001) 4 SCC 262



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“2. Concession, if made and in the event the court proceeds on the basis of such a concession, the decision cannot by any stretch be termed to be a binding precedent and as such the previous decision²¹ does not and cannot have the sanctity and solemnity of a binding precedent.”

Having thus conceded to the UPSC’s interpretation of Rule 5(c)(i) of the 1979 Rules as amended in 2012, the petitioner before this Court in ***Mukesh Kumar*** did not produce any material to show that his assignment with the Army was to be completed within one year of the cut-off date, which was conceded, *ad idem*, to be the last date for submission of applications. Ergo, the Court held that no relief could be granted to him.

36. The Division Bench, in ***Mukesh Kumar***, proceeded on the basis of the concession regarding the interpretation of Rule 5(c)(i). The decision cannot, therefore, constitute a useful precedent for the controversy before us, in which the petitioner seriously joins issue with the respondent regarding Rule 5(c)(i) and its proper meaning and construction.

37. We also agree with Mr. Avinash that the DOPT OM dated 5 April 1991 is also of no relevance, as it was issued prior to the amendment of Rule 5 of the 1979 Rules in 2012. The paragraph from the said OM, on which Mr. Agrawal relies, is in the context of the explanation below Rule 2(c) of the 1979 Rules. This Explanation formed part of Rule 2(c) of the 1979 Rules as amended by the Ex-servicemen (Re-employment in Central Civil Services and Posts)

²¹ **Banarsi Dass v. Brig. Maharaja Sukhjit Singh, (1998) 2 SCC 81**



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Amendment Rules, 1986²². Rule 2(c) of the 1979 Rules, which defined “ex-servicemen”, read, post the 1986 Amendment, thus:

“2. In Rule 2 of the Ex-servicemen (Re-employment) in Central Civil Services and Posts), Rules 1979, for clause (c), the following clause shall be substituted, namely”

(c) ‘ex-serviceman’ means a person, who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the para military forces; and

(i) who has retired from such service after earning his/her pension; or

(ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(iii) who has been released, otherwise than on his own request, from such service as a result of reduction in establishment; or

(iv) who has been released from such service after completing the specific period of engagement, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity, and includes personnel of the Territorial Army of the following categories, namely:

(i) pension holders for continuous embodied service;

(ii) persons with disability attributable to military service; and

(iii) gallantry awarded winners.

Explanation: The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of ‘ex-servicemen’, may be permitted to apply for re-

²² “the 1986 Amendment Rules” hereinafter



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employment one year before the completion of the specified term of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.”

The 1991 OM was, therefore, issued in the context of re-employment of ex-servicemen under the Explanation to Rule 2(c) of the 1979 Rules as amended in 1986. The Explanation specifically required the re-employment to be within a year of application. We are not concerned with re-employment. Besides, this Explanation was also removed from Rule 2(c) in the 2012 Amendment, as is apparent from the amended Rule 2(c), extracted in para 32 *supra*.

38. The DOPT OM dated 3 April 1991, therefore, has no relevance to the issue before us.

39. For the same reason, we are not persuaded to rely on the DOPT OM dated 25 February 2014, and the Compendium circulated thereunder. We have reproduced, in para 33 *supra*, the paragraph from the said Compendium on which Mr. Agrawal seeks to rely. We are constrained to say that the OM has been issued without proper application of mind, as the paragraph relies on the 3 April 1991 OM, and merely reiterates it, without noticing that the 1991 OM was based on the Explanation below Rule 2(c) of the 1979 Rules as amended in 1986, which was subsequently removed when the Rules were further amended in 2012.

40. Insofar as the interpretation of Rule 5(c)(i) of the 1979 Rules, with which we are concerned, is involved, therefore, we have, before



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us, a *tabula rasa*.

41. Mr. Agrawal contends that the period of one year, for applying the inclusive parenthetical clause in Rule 5(c)(i), has to be reckoned from the last date for submission of applications for participating in the Examination. *Per contra*, Mr. Avinash asserts that the period of one year can, at the earliest, be counted only from the date when the results of the Examination are declared.

42. We have already dealt with the grounds on which Mr. Agrawal predicates his case, and found them to be without substance.

43. While there is no definite indicator on the basis of which we can definitively state that the framers of the 2012 Amendment Rules intended the period of one year to be reckonable from the date when the results of the Examination were announced, in the absence of anything to the contrary, we are of the view that the contention of Mr. Avinash, to this effect, deserves to be accepted.

44. Rule 5(c)(i), as amended by the 2012 Amendment Rules, starts with the words “For appointment to any vacancy in Group A or Group B services or posts”. The stipulations which follow thereafter are, therefore, to be understood as being specified for the purpose of appointment to the Group A or Group B vacancies – in this case, for the vacancies of AC.

45. The clause goes on to say that the appointment would be made “*on the results of*” the AICE. Thus, the results of the AICE are the



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determinative criterion on the basis of which the appointments are to be made. One who succeeds, is to be appointed; one who does not, is not.

46. When the parenthesized words “those whose assignment is due to be completed within one year” are juxtaposed with these specifications, there is logic in Mr. Avinash’s submission that the period of one year should be reckoned from the date of declaration of the results of the AICE.

47. As against this, there is absolutely nothing to support Mr Agrawal’s interpretation that the period of one year should be reckoned from the last date of submission of the application for participating in the Examination.

48. Indeed, if this were so, the MHA Notification dated 24 April 2019, whereby the Examination was notified, ought to have said so.

49. Apparently aware of this lacuna, Mr. Agrawal sought to rely on Note II under the head “Eligibility Conditions” in the MHA Notification, in conjunction with the definition of “ex-serviceman” in the 1979 Rules as amended in 2012.

50. We have extracted these provisions in para 33 *supra*. We find nothing, in them, to support Mr. Agrawal’s interpretation of Rule 5(c)(i) of the 1979 Rules. Note II merely states that the term “ex servicemen” would be as per the definition of the expression in the 1979 Rules as amended in 2012. The definition of “ex serviceman”,



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in the 1979 Rules, as amended, no doubt refer to persons who *have been* released, or relieved, retired or discharged, but this clause, which is merely in the nature of a definition, has obviously to be read with the substantive Rule 5(c)(i), which extends the benefit of appointment to Group A and Group B posts to persons who would retire within one year. It is obvious that the two clauses have to be construed harmoniously. If the manner in which Mr. Agrawal seeks to interpret Rule 5(c) of the 1979 Rules, as amended, is to be accepted, the words “including those whose assignment is due to be completed within one year”, as contained in Rule 5(c)(i), would be rendered totally otiose, and have no application whatsoever.

51. It is also settled that, in such cases, the benefit of any ambiguity has to enure to the benefit of the candidate, and not the administration.²³

52. We are, therefore, inclined to accept Mr Avinash’s contention that the period of one year has to be reckoned from the date when the results of the Examination are announced. We make it clear that we are adopting this interpretation not as a legal principle, but in the facts of the present case in which Rule 5(c)(i) is silent regarding the date from which the period of one year is to be reckoned. We are influenced, in adopting this interpretation, with the purpose of ensuring that substantial justice is done.

53. We are not inclined to hold the petitioner to be disentitled to appointment, or to uphold the cancellation of his candidature, on the

²³ Refer *Parvaiz Ahmad Parry v. State of J&K*, (2015) 17 SCC 709 [Para 15]



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ground of misstatement and suppression of fact. The observations of the UPSC, in the communication dated 17 August 2021 to the petitioner, in this regard, to our mind, are insufficient to justify such allegations, which are serious and not to be lightly levelled.

54. The observation that the petitioner had falsely stated, at the time of PET/PST, that he had lost his Discharge Certificate, we feel, is unfair. The UPSC has not doubted the fact that the petitioner did lose his bag, and that an FIR had been lodged in that regard. It is also not in dispute that the requisite documents were later tendered by the petitioner – indeed, the petitioner’s candidature has not been cancelled for want of submission of any documents. In the circumstances, we feel that the petitioner’s submission that he had, in the mentally traumatised circumstances in which he was, having lost his bag which contained all his certificates and other documents, erroneously stated, in the FIR, that he has lost his Discharge Certificate, instead of his Service Personnel Certificate, merits acceptance.

55. Equally, we find no substance in the allegation, in the communication dated 17 August 2021, that there was “contradiction” in the entries contained in the DAF as filled in by the petitioner. The petitioner had applied for consideration as an ESM. This obviously meant that he had been employed with the Armed Forces. The statement that he had not been earlier employed had, obviously, to be understood in that light, and we find the explanation, of Mr. Avinash, that the petitioner intended to convey that he had never been employed with the CAPFs, to be worthy of acceptance. Indeed, else, the very query as to whether the petitioner had earlier been employed,



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once he had applied for consideration as an ESM, would be rendered redundant and superfluous.

56. The cancellation of the petitioner's candidature cannot, therefore, be sought to be justified on the ground that he had resorted to any misstatement or suppression of fact.

57. We are, therefore, inclined to set aside the cancellation of the petitioner's candidature.

58. Having said that, we find one impediment in directing appointment of the petitioner against the ESM vacancy against which he applied. The petitioner has, in para 27 of the writ petition, candidly acknowledged that another candidate, belonging to the Scheduled Tribes, was *recommended* against that vacancy. The petitioner ought, in all fairness, to have impleaded the said candidate. (Indeed, in ***Mukesh Kumar***, the selected candidate was impleaded.) He has not done so. As a result, no vacancy was reserved for the petitioner by this Court, unlike the position which obtained in ***Mukesh Kumar***. We do not, therefore, know if the ESM vacancy, against which the petitioner applied, is still available. No submissions were advanced before us on that score, and the written submissions filed before us are also silent on the point.

C. Conclusion

59. As a result, this writ petition is allowed to the following extent:



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(i) The cancellation of the petitioner's candidature for the post of AC in the BSF as an ESM, consequent to the CAPF (ACs) Examination 2019, is quashed and set aside.

(ii) In the event that an ESM vacancy of AC is still available, the candidature of the petitioner is directed to be further processed for appointment against the said vacancy.

(iii) The petitioner would, in that event, be entitled to be appointed as AC with others who participated with him, and to all consequential benefits including seniority, continuity of service and fixation of pay, but not to any arrears of salary.

60. There shall be no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 09, 2026

DSN/AR