RESERVED (Court No. 1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 658 of 2021

Tuesday, this the 10th day of December, 2024

"Hon'ble Mr. Justice Anil Kumar, Member (J) Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

Sonveer (No. 15755652X Rect), S/o Sri Badam Singh, R/o Village-Basrai, Chahar, Agra, Uttar Pradesh.

..... Applicant

Ld. Counsel for the : Shri Yashpal Singh, Advocate

Applicant Shri Sachindra Pratap Singh, Advocate

Versus

- 1. Union of India, through its Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
- 2. Officer-in-Charge Records, Signals, PIN-901124, C/o 56 APO.
- 3. Commandant/Brigadier-1, Signal Training Centre, Jabalpur, M.P.
- 4. Commanding Officer-2, Technical Training Regiment, 1, Signal Training Centre, PIN-901124, C/o 56 APO.
- 5. Company Commander, (2 Coy) Technical Regiment, 1, Signal Training Centre, Jabalpur (M.P.), Pin-901124, C/o 56 APO.

.....Respondents

Ld. Counsel for the : Ms Appoli Srivastava, Advocate

Respondents. Central Govt. Counsel

ORDER

Per Justice Anil Kumar, Member (J)

- 1. Being aggrieved with order of termination dated 03.07.2020 issued by respondent No 4, the applicant has filed the instant O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-
 - (i) To set aside the termination dated 03.07.2020 passed by the Commanding Officer-2, Technical Training Regiment-1 Signal Training Centre, PIN-901124, C/o 56 APO, whereby the applicant has been terminated from service.
 - (ii) Issue directions to the respondents to reinstate the applicant in service on the regular basis with all consequential benefits.
 - (iii) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
 - (iv) Allowing this application with cost.
- 2. Brief facts of the case are that the applicant was enrolled in the Army on 23.03.2018 and after completion of basic military training he was posted to 2 Technical Training Regiment on 03.12.2018. During the course of service, verification roll in respect of the applicant was sent to District Magistrate, Agra which was received back vide letter dated 05.11.2018 stating that the applicant was involved in two court cases i.e. case No. 40/16 u/s 147, 323, 504, 506, 427 of IPC and case No. 91/16 u/s 110 (g) of IPC which were subjudice before District Court Agra (Annexure CA-1), prior to his enrolment on 23.03.2018. At the time of enrolment, in accordance to the Army Act and the Rules framed there under, he was required to submit a verification roll and an

attestation form and certain information were required to be given by him in the verification roll vide Para 8 of I.A.F.K-1162 (Revised -2008). The attestation and verification was done by the applicant before Enrolling Officer and in the Verification Roll (Annexure 1-A) the applicant categorically stated in reference to queries to the effect that no criminal case was pending against him in any Court of Law at the time of enrolment. Based on the aforesaid submission (Annexure 1-A), the applicant was enrolled and on verification from civil authorities when the information was found incorrect, the applicant's services terminated were w.e.f. 22.07.2020.

- 3. It is the case of the applicant that he has not willfully or with any ulterior motive suppressed any fact. His version is that he was falsely implicated in criminal case during Panchayat Elections and since he has been acquitted of the criminal case by the order of Upper Chief Judicial Magistrate, Agra on 21.08.2019, he be reinstated in service.
- 4. Learned counsel for the applicant submitted that after completion of training the applicant had received a Show Cause Notice dated 11.02.2019 issued by Lieutenant Colonel Bibhuti Mishra mentioning therein that the applicant while filling the enrolment form had supplied false information with regard to his involvement in criminal case. It was also mentioned in the Show cause notice that two court cases were pending against the

applicant under Section 147, 323, 504, 506, 427 and 110 (g) of IPC to which reply was sought. It was submitted that the applicant was issued second Show Cause Notice dated 25.04.2020 to which applicant submitted reply on 15.05.2020 stating therein that he had no knowledge of pending court cases, but even then he was dismissed from service and no action was taken on the reply dated 15.05.2020 submitted by the applicant.

5. Learned counsel for the applicant further submitted that at the time of enrolment, the applicant was unaware about the pending Court cases against him pertaining to the year-2016 and that was the reason he stated in the enrolment form that no Court case was pending against him in any Court of Law. counsel for the applicant further submitted that being falsely implicated in Court cases by some villagers during Panchayat Elections, he was acquitted by Upper Chief Judicial Magistrate, Agra vide order dated 21.08.2019 (Annexure No-5). He submitted that since he was acquitted prior to dismissal from service, he be re-instated into service on the ground that the competent authority vide impugned order dated 03.07.2020 did not consider reply of the applicant and also the judgment and order dated 21.08.2019 passed by the Upper Chief Judicial Magistrate, Agra who exonerated the applicant honourably stating that the prosecution failed to prove allegations against the applicant.

- 6. Learned counsel for the applicant further submitted that the competent authority has terminated the applicant without application of judicial mind in a mechanical manner and as such the termination is liable to quashed and applicant deserves to be re-instated into service. He pleaded for setting aside impugned order dated 03.07.2020 and re-instate the applicant into service on the regular basis with all consequential benefits.
- 7. On the other hand, the respondents have refuted the aforesaid and in the detailed counter affidavit submitted that as the applicant made false statement in answer to queries made vide Para 8 of the Verification Roll before Army Recruiting Office, Agra and as the District Magistrate vide his communication dated 05.11.2018 (Annexure CA-1) informed about FIR being registered against the applicant in the Police Station in question, charge-sheet being filed against him for the offences as detailed therein and the fact of his prosecution in these criminal cases being pointed out, a Court of Inquiry (C of I) was conducted on 13.03.2019. findings of the C of I reads as – 'As per documentary evidence, there were two court cases (case No 40/16 under IPC Sec 147, 323, 504, 506, 427 and case No 91/16 under IPC Sec 110 (g) against No. 15755652X Rect (Lmn) Sonvir of 2 Coy, 2 Tech Trg Regt, 1 Sig Trg Centre, which are related to indulging in unlawful activities by creating disturbance, violation, injuring, threatening and trying to losing of money to persons on being misled. The

same were subjudice in the Court of Law, District Agra (UP) at the time of his enrolment and are still going on'.

- 8. Learned counsel for the respondents further submitted that on receipt of reply dated 15.05.2020, the Commandant 1 Signal Training Centre approved administrative termination of recruit for intentionally concealing the fact, misconduct and manipulation of legal documents for securing his enrolment and therefore, speaking order dated 03.07.2020 (Annexure CA-1) was issued to the applicant and he was terminated from service as per Para 25 (a) of policy letter dated 13.11.1978 (Annexure CA-5), Army Act Section 20 and Army Rule 17 for offence committed at the time of enrolment.
- 9. Learned counsel for the respondents further submitted that the applicant was rightly terminated from service in terms of the relevant rules and provisions for concealment of facts i.e. involvement in offences under IPC which was subjudice before the Court at the time of enrolment. Learned counsel for the respondents further argued that the applicant, being a member of the disciplined force viz. the Indian Army, was required to disclose all particulars with regard to his antecedent at the time of enrolment and he having suppressed material fact with regard to his involvement in criminal cases, the respondents do not have confidence in him and in taking action in accordance with prescribed procedure and also applicant having admitted the fact

during the C of I, there is no requirement of any interference. She pleaded for dismissal of O.A.

- 10. Heard learned counsel for the parties at length and perused the record.
- Facts need no elaborate consideration as they are admitted by both the parties. A perusal of Verification Roll submitted by the applicant at the time of enrolment vide Annexure 1-A of counter affidavit goes to show that the applicant is a resident of Police Station-Kagarol, District-Agra (UP) and in Para 8 of the Verification Roll, detailed information was sought for with regard to criminal antecedent of the applicant pertaining to his arrest, prosecution, detention, pendency of criminal case in the Court of Law etc, if any, and the applicant himself filled the form No I.A.F.K.-1162 (Revised-2008) at Army Recruiting Office-Agra. Warning has been recorded in the attestation form informing the applicant that any false statement made by him in the attestation form would invite penal When the same was sent for verification, the consequences. District Magistrate-Agra in his communication dated 05.11.2018 (Annexure CA-1) has clearly stated that the applicant was facing prosecution in the Court of Law. For convenience sake, extract of letter dated 05.11.2018 is reproduced as under:-

 12. Based on the C of I, statement in respect of the applicant and witnesses were recorded and examined which proved that he had given wrong information while filling the enrollment/verification In the said C of I (Annexure CA-2) the applicant himself admitted that he was under trial by Court in connection with legal cases prior to his enrolment. Based on his acceptance that he had suppressed the material fact during the course of enrolment, the entire matter was placed before the competent authority i.e. Commandant, 1 Signal Training Centre who issued Show Cause Notice dated 25.04.2020 asking the applicant to show cause as to why he should not be dismissed from service under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954 for stating the falsehood during enrolment at Army Recruiting Office, Agra, which otherwise would have disentitled the applicant to be enrolled in the service. On receipt of reply dated 15.05.2020, respondents on finding the applicant to have suppressed material fact took the impugned action as per provisions of Para 25 (a) of Army HQ letter No A/041531/Rtg 5 (d) dated 13.11.1978 (Annexure CA-5) and removed the applicant from service w.e.f. 20.07.2020 (AN) under Army Act Section 20 read in conjunction with Army Rule 17 for the offence committed at the time of enrolment at Army Recruiting Office, Agra. For convenience sake, extract of Para 25 of aforementioned letter is reproduced as under:-

<u>DISPOSAL OF RECRUITS REPORTED UPON</u> <u>BY THE CIVIL AUTHORITIES</u>

- "25. The reports on verification of character and antecedents of recruits will at all times be treated as 'SECRET'. Cases of recruits adversely reported upon by the civil authorities will be disposed off as under:-
- <u>Adverse</u> Criminal Record. The Commandants should carefully examine the report against the recruit and take a decision on his retention or otherwise. A recruit should, however, not be discharged as a matter of course, merely on account of his conviction by the civil power. Commandants should use their discretion in a deciding whether the offence is of so serious a nature, or the punishment awarded of so long a duration, as to merit discharge from the Army. It will seldom be advisable to retain a man who had recently been in jail or who had at any time been in jail for more than six months. Wherein doubt the Commandants may refer such cases to HQ Commands for a decision. However, if his services are to be distressed with on this account, the recruit will invariably be apprised of this, irrespective of the fact whether he had/had not suppressed this information, but entry in the discharge certificate will be 'services no longer required."
- 13. Having perused the aforesaid provision, it clearly indicates that any person who at the time of enrolment gives false answer to the question put forth in the prescribed form of enrolment is guilty of the offence. On receipt of adverse verification, the Centre Commandant has discretionary power to retain/remove a recruit. Accordingly, we are of the considered view that termination order

was in strict compliance with the requirement of the statutory rule as contemplated in the Army Act and the Army Rules.

- 14. That being so, we find no error in the procedure conducted against the applicant. Having held so, the question would be as to whether the respondents were within their right in removing/discharging the applicant for the alleged act with regard to non-disclosure of material facts of the attestation/enrolment form and whether any interference in the matter is called for?
- 15. The law with regard to suppression of facts at the time of appointment particularly with regard to pendency of criminal case has been subject matter of consideration before various Hon'ble High Courts and Hon'ble Supreme Court in various cases and the law can be crystallized in the following manner.
- 16. In the case of *Jainendra Singh vs State of Uttar Pradesh* (2012) Vol 8 SCC page 748, the cardinal principles with regard to obtaining appointment by deliberately suppressing fact by the appointee has been considered and in Para 29, the principles have been culled out as under:-
 - "(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.
 - (ii) Verification of the character and antecedents is one of the important criteria to test whether the selected

candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

- (iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.
- (iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.
- (v) Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.
- (vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.
- (vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.
- (viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.
- (ix) An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.
- (x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the

candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

17. In the case of Daya Shankar Yadav vs. Union of India & Ors, (2010) 14 SCC 103, the Hon'ble Supreme Court had an consider occasion to the purpose of seeking information with respect to antecedents. In the order, it is observed and held that the purpose of seeking the information with respect to antecedent is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Thereafter, it was observed and held that an employee can be discharged from service or a prospective employee may be refused employment on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction in criminal offence (even if he was ultimately acquitted in the criminal case). The Hon'ble Apex Court in para 16 has observed and held as under:

"16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

and character. disclosed in a from his conviction criminal case. his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying i examination) or rustication or suspension o r debarment from college, etc.; and (ii) on the ground

(i) on the ground of unsatisfactory antecedents

of suppression of material information or making

false statement in reply to queries relating to prosecution or conviction of a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."

- 18. The Hon'ble Apex Court in the case of *State of A.P. vs B Chinnam Naidu*, (2005) 2 SCC 746 observed that the object of requiring information in the attestation form and the declaration thereafter, by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.
- 19. The Hon'ble Apex Court in the case of **Devendra Kumar vs State of Uttaranchal**, (2013) 9 SCC 363, has held that while joining the training, the employee was asked to submit an affidavit giving certain information, particularly, whether he had ever been involved in any criminal case. The employee submitted an affidavit stating that he had never been involved in any criminal case. The employee completed his training satisfactorily and it was at the time that the employer in pursuance of the process of character verification came to know that the employee was in fact involved in a criminal case. It was found that the final report in that case had been submitted by the prosecution and accepted by the

Judicial Magistrate concerned. On the basis of the same, the employee was discharged abruptly on the ground that since he was a temporary government servant, he could be removed from service without holding an enquiry. In the case in hand, the applicant was also a temporary employee as he was not attested. 20. The Hon'ble Apex Court in its judgment in State of Rajasthan & Ors vs. Chetan Jeff, Civil Appeal No. 3116 of 2022, decided on Paras 11.05.2022 has held in 6, 7, 8 suppression of material fact by a person in respect of his criminal antecedents and making a false statement in the enrolment form will result cancellation/rejection of his candidature or dismissal from service. The relevant Paras for convenience sake are reproduced below:-

- At the outset, it is required to be noted that the post on which the writ petitioner is seeking the appointment is the post of constable. It cannot be disputed that the duty of the constable is to maintain law and order. Therefore, it is expected that a soldier should be honest, trustworthy and his integrity is above board and that he is reliable. An employee in uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated. In the present case the applicant has not confirmed to the above expectations/requirements. He suppressed the material facts of his involvement in criminal antecedents. He did not disclose in the enrolment form that against him a civil/criminal case/FIR is pending. On the contrary, in the enrolment form, he made a false statement that he is not involved in any civil/criminal case and not facing any trial. Therefore, due to the aforesaid suppression, his candidature came to be rejected by the appropriate authority. Despite the above, the learned Single Judge allowed the writ petitioner and directed the State to consider the case of the original writ petitioner for appointment as a constable mainly on the ground that the offences we4re trivial in nature and the suppression of such offences should have been ignored. The same has been confirmed by the Division Bench.
- 6.2 The question is not whether the offences were trivial in nature or not. The question is one of suppression of material

fact by the applicant in respect of his criminal antecedents and making a false statement in the enrolment in beginning itself, has suppressed the he material fact in respect of his civil/criminal antecedents and in fact made an incorrect statement, how can he be appointed as constable. How can he be trusted thereafter in future? How it is expected that thereafter he will perform his duty honestly and with integrity?

- 6.3 Therefore, as such the authorities were justified in rejecting the candidature of the respondent for the post of constable.
- 7. Applying the law laid down by this Court in the aforesaid cases, it cannot be said that the authority committed any error in rejecting the candidature of the original writ petitioner for the post of constable in the instant case.
- 8. Even otherwise it is required to be noted that subsequently and during the proceedings before the learned Single Judge as well as the Division Bench, there are three to four other FIRs filed against the original writ petitioner culminating into criminal trials and in two cases he has been acquitted on the ground of compromise and in one case though convicted, he has been granted the benefit of Probation of Offenders Act. One more criminal case is pending against him. Therefore, the original writ petitioner cannot be appointed to such a post of constable.
- 9. In view of the above discussion and for the reasons stated above, both, the learned Single Judge as well as the Division Bench have erred in directing the State to consider the case of the respondent for appointment as a constable. The judgment and order passed by the High Court is unsustainable, both, on facts as well as on law. Under the circumstances, the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the candidature of the respondent original writ petitioner for the post of constable had been rightly rejected by the appropriate authority. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs."
- 21. Relying upon judgment of the Hon'ble Supreme Court in the case of *Avtar Singh vs Union of India & Ors*, (2016) 8 SCC 471 submission of learned counsel for the applicant is that in view of decision of *Avtar Singh* (supra), the case of the applicant is liable to be re-considered by the Competent Authority on the ground that it is evident from the judgment dated 21.08.2019 that there was no

proof against the applicant and the false case was lodged due to political rivalry in the village.

- 22. During the course of hearing, learned counsel for the respondents has also relied upon *Avtar Singh* (supra) and cited the following from the case law:-
 - "(i) Once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. Although it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.
 - (ii) The employer is given 'discretion' to terminate or otherwise to condone the omission. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision."
- 23. We have gone through *Avtar Singh* (supra) case which was decided by the Larger Bench of the Hon'ble Supreme Court. The Hon'ble Apex Court after analyzing all the aspects with regard to issue in question finally came to the conclusion as under:-
 - "38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.
 - 38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
 - 38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision."

- 24. The principles laid down in Para 38.1 clearly indicates that suppression of information by a candidate with regard to pendency of criminal case whether before or after entering into service must be true and there should be no suppression about this required information. If the candidate has suppressed the information and has obtained appointment by suppressing the material information which is neither technical nor trivial in nature, the employer has the right to act in accordance to the rules and instructions and cancel the candidature or terminate the service. It has been held by the Hon'ble Apex Court in the case of Avtar Singh (supra) that a person who has suppressed the material information cannot claim unfettered right for appointment or continue in service. He only has a right not to be dealt with arbitrarily and the employer has to exercise the power in a reasonable manner with objectivity having due regard to the facts of the case.
- 25. Keeping in view the legal principals as have been discussed hereinabove, we find that in the matter of suppression of facts with regard to pendency of criminal case at the time of recruitment, particularly in a disciplined force like Army, the effect of such a suppression is fatal and an employer who finds suppression of fact by the employee at the time of attestation and a verification of his past antecedent will have no confidence in keeping such an employee in service. The Hon'ble Supreme Court in the case of *Avtar Singh* (supra) as mentioned above have already approved

similar action taken in the matter of dismissal from service on account of suppression of material fact and fraudulently seeking appointment by suppression of such fact.

- 26. Accordingly, in the light of the facts established, we find that no case is made out for interference both on law and fact. The applicant being a member of the disciplined force was duty bound to disclose his entire previous antecedent at the time of enrolment, particularly when criminal case was pending against him on the day he filled the Verification and Attestation Forms. Non-disclosure of this fact by the applicant which was within his knowledge is an offence under Section 44 of the Army Act, 1950 and taking serious view of the same, the Competent Authority of the Armed Forces decided to terminate the applicant from service. The same being in accordance to the requirement of law and in compliance of the statutory provisions, we see no reason to interfere into the matter of such administrative action.
- 27. In view of above, we find that offence of the applicant for not disclosing the information of his involvement in civil/criminal case in enrolment form during his recruitment in the Indian Army is not of a trivial nature but it is of a serious nature, therefore, suppression of such material facts at the time of enrolment or after recruitment cannot be ignored and therefore, in view of aforesaid judgments of the Hon'ble Apex Court, applicant has rightly been terminated from service.

28. In view of the above, we do not find any illegality or violation of any Rule and Regulation in terminating the applicant from service. The O.A. is devoid of merit and deserves to be dismissed.

It is accordingly dismissed.

- 29. No order as to costs.
- 30. Pending Misc. Application(s), if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain) Member (A) (Justice Anil Kumar) Member (J)

Dated: 10.12.2024

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RESERVED

Court No 1

Form No. 4

{See rule 11(1)} ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 658 of 2021

Sonveer (No 15755652X Rect)

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the	Orders of the Tribunal
Registry	
	10.12.2024
	Hon'ble Mr. Justice Anil Kumar, Member (J)
	Hon'ble Vice Admiral Atul Kumar Jain, Member (A)
	Judgment pronounced.
	O. A. No. 658 of 2021 is dismissed.
	For orders, see our judgment and order passed on separate sheets.
	(Vice Admiral Atul Kumar Jain) (Justice Anil Kumar)
	Member (A) Member (J)
	rathore