

(Ex) Capt. Randhir Singh Dhull vs S. D. Bhambri & Others on 2 March, 1981

Equivalent citations: 1981 AIR 1082, 1981 SCR (3) 55, AIR 1981 SUPREME COURT 1082, 1981 LAB. I. C. 585, 1981 UJ (SC) 292, 1981 SCC (L&S) 386, (1981) 1 LAB LN 603, 1981 (2) SCC 338, (1981) 1 SERVLR 384

Author: Baharul Islam

Bench: Baharul Islam, R.S. Pathak, O. Chinnappa Reddy

PETITIONER:

(EX) CAPT. RANDHIR SINGH DHULL

Vs.

RESPONDENT:

S. D. BHAMBRI & OTHERS

DATE OF JUDGMENT 02/03/1981

BENCH:

ISLAM, BAHARUL (J)

BENCH:

ISLAM, BAHARUL (J)

PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 1082 1981 SCR (3) 55

1981 SCC (2) 338 1981 SCALE (1) 647

CITATOR INFO :

RF 1986 SC1183 (1)

F 1991 SC1047 (14)

ACT:

Punjab Tahsildari Rules 1932, Rules 5 and 11 and Standing Order No. 12 of 1909, Part A, Para 4(1) and Punjab Emergency (Concession) Rules 1965, Rules 2 and 4(ii)-Class 'A' Tahsildar-Recruitment-Candidates initially 'accepted' and thereafter 'appointed'-Seniority-Determined by date of substantive appointment in the post-Military service rendered by a candidate-Concession in seniority-When admissible.

HEADNOTE:

Standing Order No. 12 of 1909 (Part A) provides for two classes of Tahsildar candidates (1) class 'A' (or direct) and (2) class 'B'. Para 4 (1) of the Standing Order read with the Punjab Tahsildari Rules 1932 provides that candidates are required to undergo training for a period of three years in the case of class 'A' direct recruits. In addition to the completion of training a candidate is required to pass a qualifying departmental examination before he is eligible to be appointed to the post of Tahsildar, temporary or permanent.

Initially, a tahsildar candidate is not enrolled against any post, nor is he appointed against any vacancy but is appointed against vacancies after completing the training and passing the examination held. After appointment to the post of tahsildar, the officer has to be on probation for a period of two years under Rule 10 of the Tahsildari Rules. Rule 11 provides that the seniority of members of the service shall be determined by the date of substantive appointment in the post.

The Punjab Emergency (Concession) Rules, 1965 provides by sub-rule (ii) of Rule 4 that the period of 'military service' shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

The petitioner in his writ petition contended, that he appeared in the class 'A' Tahsildar candidate Haryana Civil Services (Executive Branch) Services Examination 1972-73 and was accepted as 'A' Class Tahsildar candidate on September 13, 1974 and joined the civil post with effect from September 26, 1974. After completing the training he was appointed to the post on January 3, 1978. He approached respondent No. 1 under Rule 4(1) and (ii) of the Punjab Emergency (Concession) Rules, 1965 and requested that the military service rendered by him from 1963 to 1974 except for the period from July 2, 1968 to October 13, 1968 be tagged on to his services with effect from September 26, 1974 for the purpose of his seniority, increments, promotion, pensions etc. and that respondent No. 1 did not give this facility though it was accorded to other respondents, and that the promotion of respondents Nos. 3 to 18 who were junior to him had violated Articles 14 and 16 of the Constitution.

The first respondent claimed that the petitioner was accepted as class 'A' Tahsildar candidate on 13th September, 1974 and that he had qualified himself

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for the post of Tahsildar after he had completed the prescribed training and successfully qualified in the departmental examination and that he was appointed as Tahsildar by the order dated January 3, 1978. As the petitioner had been in service in the Armed Forces from April 29, 1963 to January 10, 1968 on which day termination of the Emergency was declared, the petitioner was given the

benefit of the service and his seniority was fixed as on May 26, 1973 in accordance with the provisions of Rule 4, sub-clause (ii) read with Rule 2 of the Punjab Emergency (Concession) Rules 1965.

Dismissing the petition,

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HELD : 1. The petitioner was not appointed to but accepted as a candidate for the post of Tahsildar. [63 D]

In the instant case a perusal of the letter of appointment Annexure P-5 alongwith sub-rules 2 and 3 of Rules 5 and 11 of the Tahsildari Rules shows that the petitioner was merely accepted as a candidate for the post of Tahsildar. It is mentioned therein that the terms and conditions of the service namely training, passing of departmental examination, and probation are to be governed by the Tahsildari Rules and Standing Order No. 12 as amended from time to time. A candidate had to fulfil the said terms and conditions mentioned before his appointment to the post of Tahsildar. [62 H-63 D]

2. The petitioner's substantive appointment was by order dated January 3, 1978. It is clear from the said order that the substantive appointment of the petitioner cannot be before the said date. [63 E, 64 F]

3. The military service of the petitioner from January 11, 1962 to July 1, 1968 and again from October 31, 1968 to September 22, 1974 was not during the operation of emergency. The petitioner's service from October 31, 1969 to September 22, 1974 was not as an "enrolled or commissioned service in any of the three wings of the Indian Armed Forces." During this period the petitioner had been allowed the benefit of service rendered by him in the Army for the period from April 29, 1963 to January 10, 1968 by the order dated December 14, 1978 of the Financial Commissioner. [66 C]

4. The petitioner has not been able to point out that any of the respondent Nos. 3 to 18 was given seniority from the date of acceptance. In fact none of them was accepted alongwith him by letter dated September 13, 1974. [67A]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 1099 of 1979. (Under Article 32 of the Constitution)
R. K. Garg, P. C. Bhartari, K. S. Tiwari, Arvind Kumar and Mrs. Laxmi Arvind for the Appellant.

K. G. Bhagat and M. N. Shrof for Respondents 1 & 2. The Judgment of the Court was delivered by BAHARUL ISLAM, J. This is an application under Art. 32 of the Constitution of India. The Petitioner, Ex.-Capt. Randhir Singh Dhull prays that the military services rendered by him from 1963 to 1974 (except for the period during 1968 from 2.7.68 to 13.10.1968) be tagged to his services with effect from 26.9.1974 for the purpose of his seniority, increments, promotion, pensions etc.,

and for a direction to respondent no. 1, the State of Haryana, to promote him to the Haryana Civil Service (Emergency Branch) on the basis of the seniority claimed with effect from the date mentioned above. His grievance is that respondents no. 3 to 18 who were junior to him had been promoted and put above him. The impugned action of respondent no. 1, according to the petitioner, has violated Arts. 14 and 16 of the Constitution.

2. This case has a chequered career. The material facts may be stated in a short compass. The petitioner is an ex- army personnel, his rank having been Captain. He served during the period of Emergency from 29-4-1963 to 1-7-1968 and also during the period of Emergency from 31.10.1969 to 22.9.1974, the total period of service thus having been 10 years, one month and 23 days before his appointment to the present post he is now holding.

3. The respondent no. 1 through the Haryana Public Service Commission by an advertisement called for applications that a combined competitive examination for recruitment to, inter alia, "A Class Tahsildar (Apprentices) would be held by the Haryana Public Service Commission at Chandigarh in March, 1973 in accordance with the rules contained in the Punjab Public Service (Executive Branch) Rules, 1930. The petitioner appeared in the said examination and was successful and as a result he was appointed to present post of Tahsildar Class II post..... against reserved post/service for ex-services."

4. There is a set of rules called the Punjab Emergency (Concession) Rules, 1965 (hereinafter 'the Emergency Concession Rules'). According to the petitioner he joined civil post on 26.9.74 and under Rule 4(i) & (ii) of the aforesaid Rules and the administrative instructions his services are required to be counted immediately on his joining the Civil post namely with effect from 26.9.1974, tagging the period of military services to the present post. But as respondent no. 1 did not do so, he sent several representations to respondent no. 1 to give him the benefit of seniority, promotion, increment etc. according to the said set of Rules. The petitioner alleges that while respondent no. 1 did not tag the petitioner's period of military service towards his seniority; promotion and increment, respondent no. 1 gave similar facilities to Capt. Phul Singh, Kewal Singh, Indraj Singh, H.R. Kapur and other respondents. His further allegation is that while he has been deprived of his dues mentioned above, respondent nos. 3 to 18, who were junior to him were promoted to be put above him.

As the respondent no. 1 did not favourably react to the representations made by the petitioner, he filed a Writ Petition, being W. P. No. 1398/77, in the High Court of Punjab and Haryana but he withdrew it on a promise made by the Counsel of respondent no. 1. But as respondent no. 1 did not keep the promise he filed an application for review of the order made in W. P. No. 1398 of 1977. The petition for review was rejected but he was permitted by the High Court of Punjab and Haryana to file a fresh application. He then filed CWP No. 3584 of 1977 which was dismissed in August, 1978 by a single Judge of the said High Court. The petitioner filed Letters Patent Appeal from the judgment of the single Judge. The Letters Patent Appeal was also dismissed. The petitioner then filed a special leave petition before this Court. The special leave petition was also dismissed. He then filed an application for review before this Court. The application for review was also dismissed in limine. The petitioner then filed an application before the single Judge of the High Court of Punjab and Haryana for the review of his judgment but it was dismissed in April, 1979. Against that order a

special leave petition, being S.L.P. (Civil) No. 4475 of 1979, was filed before this Court. The Special Leave Petition was allowed to be withdrawn by this Court with liberty to the petitioner to file a Regular Writ Petition under Article 32 of the Constitution by Order dated 27.8.79. The petitioner has thus filed the present writ application.

5. Respondent No. 1 (hereinafter 'the respondent') has filed a counter affidavit. The contention of the respondent is that by Annexure P. 5 the petitioner was not appointed to the post of Tahsildar but he was accepted as a Tahsildar candidate. In other words, the Respondent's contention is that the petitioner was accepted as an Apprentice for appointment to the post of Tahsildar after he qualified in the Haryana Civil Service (Executive Branch) and Allied Services Examination held by the Haryana Public Service Commission in 1972-1973 in accordance with the rules in force for selection of 'A' class Tahsildar-apprentices. According to the respondent the petitioner was accepted by the Financial Commissioner, Haryana, as a candidate, for the post of Tahsildar in the State of Haryana on 13th September, 1974 as per Annexure P. 5. The respondent has explained the procedure. The procedure is that candidates for the post of Tahsildar are required under para 4(1) of the Standing Order No. 12 (hereinafter 'the Standing Order') issued by the Financial Commissioners read with Rule 5 of the Punjab Tahsildari Rules 1932, (hereinafter 'the Tahsildari Rules') to undergo training for a period of three years in the case of directly recruited candidates categorised as 'A' Class. In the case of candidates recruited otherwise are categorised as 'B' class candidates; the training period is fixed by the Financial Commissioner keeping in view candidates' experience and qualification. In addition to the completion of training, candidates are required to pass certain qualifying departmental examination before he is eligible to be appointed to the post of Tahsildar, temporary or permanent. Initially the tahsildar candidates are not enrolled against any post, nor are they appointed against any vacancy but they are appointed against vacancies after they have completed the training and passing the examination held. After appointment to the post of Tahsildar the Officer has to be on probation for a period of two years under Rule 10 of the Tahsildari Rules. According to the respondent the petitioner was accepted as Class 'A' Tahsildar candidate/apprentice on 13th September, 1974. The petitioner qualified himself for the post of Tahsildar after he had completed the prescribed training and successfully qualified in the departmental examination and he along with 6 others was appointed as Tahsildar in the post of Tahsildar by Order dated 3rd January 1978.

The respondent's case is that 'as the petitioner had been in service in Armed Forces from April 29, 1963 to January 10, 1968 on which date termination of the Emergency was declared under Art. 352 of the Constitution with effect from 26th October, 1962, the petitioner was given the benefit of the service and his seniority was fixed as on 27th May 1973 in accordance with the provisions of Rule 4(ii) read with Rule 2 of the Emergency Concession Rules, 1965 (Annexure 'B').

6. The decision of this case depends primarily on the true and correct interpretation of the document, Annexure P- 5 :

(i) Whether it is a letter of appointment of the petitioner to the post of Tahsildar, as claimed by the petitioner, or

(ii) Whether it is a letter of acceptance of the candidature of the petitioner to the post of Tahsildar, as contended by the respondent. The material portion of document Annexure P-5 reads :

"From The Financial Commissioner & Secretary to Government, Haryana, Revenue Department. To

1. Shri Raj Kumar Aggarwal.....

2. Shri Amarnath Ichhpujani.....

3. Shri Ashok Kumar Visistha.....

4. Shri Kamal Kumar Gupta.....

5. Shri Hardhul Singh Bhole.....

6. Shri Randhir Singh Dhull (Petitioner)

7. Shri Nepal Singh Tanwar..... Memo No. 3896-E-II-74/30535 Chandigarh, dated the 13th September, 1974 Subject ; Acceptance of class `A' Tahsildar candidate Haryana Civil Services (Executive Branch) and other services examinations 1972-73. The Financial Commissioner, Revenue Haryana is pleased to accept Sarvshri Raj Kumar Aggarwal, Amar Nath Ichhpujani, Ashok Kumar Vasistha, Kamal Gupta, Hardhul Singh Bhole, Randhir Singh Dhull and Nepal Singh Tanwar as `A' Class Tahsildar candidates. The acceptance of Sarvshri Ashok Kumar Vasistha and Hardhul Singh Bhole is subject to verification of their character and antecedents.

2. The interse seniority of the above candidates will be communicated to them later.

3. The arrangements for their training will be made by the Commissioners, Ambala and Hissar Division, who are being asked to communicate the programme of training to them. They are allotted to the Commissioners, Ambala and Hissar Division for training as under :

COMMISSIONER,
AMBALA DIV.

1. Shri Raj Kumar Aggarwal
2. Shri Amarnath Ichhpujani
3. Shri Randhir

COMMISSIONER,
HISSAR DIV.

1. Shri Kamal Kumar Gupta
2. Shri Hardhul Singh Bhole
3. Shri Ashok Kumar Vasistha
4. Shri Nepal Singh Tanwar

4. The terms and conditions of their service, training, passing of departmental examination, probation etc. will be governed by the Punjab Tahsildari Rules, 1932 and the Financial Commissioner's Standing Order No. 12 as amended from time to time.

5. During the period of their training they shall draw pay at the rate of the minimum of the time scale of the post of Tahsildar of Rs. 350-25-500- 30-650-800 viz. Rs. 350/- P.M.

6. They are requested to intimate their Home Districts and the districts in which they have property to the Commissioner of Divisions to whom they have been allotted for imparting training, and this department,

7. The receipt of this communication may please be acknowledged.

Sd/-

Deputy Secretary Revenue, Financial Commissioner and Secretary to Government,
Haryana and Revenue Department."

(emphasis added)

7. Annexure P-5 is based on the Standing Order, and the Tahsildari Rules. The Standing Order, inter alia, says that the rules for the appointment, removal and discipline of Tahsildars and Naib Tahsildars are contained in the Tahsildari Rules.

Part A of the Standing Order speaks of two classes of Tahsildar:

(1) Class A (or direct) candidates and (2) Class B candidates.

The relevant provisions of Rule 5 of Tahsildari Rules may be extracted;

"5 (1) No person shall be directly appointed to the service unless in the case of appointment to the post of

(a) Tahsildar, he is graduate of a recognised university

(b)

(2) No person shall be appointed directly or by transfer to the service or promoted from the post of Naib Tahsildar to that of Tahsildar unless he shall have become qualified by passing the examination or undergoing the training prescribed from time to time in the Standing Orders of the Financial Commissioners. (3) No person shall be appointed directly or by transfer to the service unless he has been accepted as a

candidate in the case of Tahsildar by the Financial Commissioners and in the case of Naib Tahsildar by the Commissioner under the conditions prescribed from time to time in the Standing Orders of the Financial Commissioners".

(emphasis added) Rule 11 speaks of the seniority of service and need be quoted:

"11. The seniority of members of the service shall in so far as any post is concerned be determined by the date of substantive appointment in the post"

(emphasis added) 'Service' has been defined in the Tahsildari Rules as:

"Service means the Punjab Service of Tahsildars and Naib Tahsildars".

8. A perusal of the letter as per Annexure P. 5 alongwith sub-rules 2 and 3 of rule 5 and rule 11 of the Tahsildari Rules clearly show that by letter Annexure P. 5 the petitioner was merely accepted as a candidate for the post of Tahsildar. Annexure P. 5 itself has mentioned the terms and conditions of the service namely training, passing of departmental examination and probation to be governed by the Tahsildari Rules and Standing Order No. 12 as amended from time to time. A candidate had to fulfil the terms and conditions named in the letter before his appointment to the post of Tahsildar. The terms and conditions were:

(i) to undergo a period of training

(ii) to pass a departmental examination.

(iii) to undergo a period of probation, etc. Fulfillments of these terms and conditions by a candidate were conditions precedent to his appointment.

Annexure P. 5 has nowhere mentioned that the petitioner was appointed as a Tahsildar.

We therefore have no hesitation in holding that he was not appointed to, but accepted as candidate for, the post of Tahsildar, by Annexure P. 5.

9. Rule 11 lays down that the seniority of the members of the service shall be determined by the date of the substantive appointment in the post. The petitioner's substantive appointment was vide order dated 3.1.78 (Annexure A to the Counter Affidavit) which reads as:

"Subject: Declaration of 'A' Class Tahsildar candidate (under training as Naib Tahsildar) as qualified for the post of Tahsildar. In Exercise of the powers vested in him vide para 6 of the Financial Commissioners Standing Order No. 12, the Financial Commissioner, Revenue is pleased to declare the following 'A' Class Tahsildar candidates as qualified for the post of Tahsildar;

1. Shri Amar Nath Ichhpujani, under training as Naib Tahsildar, Thanesar.

2. Shri Ashok Vashisitha, under Training as Naib Tahsildar, Gurgaon.
3. Shri Kamal Kumar Gupta, under training as Naib Tahsildar, Rohtak.
4. Shri Hardhul Singh Bhole, under training as Naib Tahsildar, Mohindergarh.
5. Shri Randhir Singh Dhull, under training as Naib Tahsildar working as Tahsildar, Kalka, under local arrangement.
6. Shri Nepal Singh Tanwar, under training as Naib Tahsildar, Rawal.

2. Consequent upon the declaration of the above 'A' Class Tahsildar candidates as qualified for the post of Tahsildar, they are appointed as Tahsildars. The orders about their deployment against the posts of Tahsildars are being issued separately. Their appointment as Tahsildar shall take effect from the date they assume charge of those posts. Their appointment as Tahsildars will be governed by the Punjab Tahsildari Rules, 1932, and the Financial Commissioners Standing Order No. 12, as amended from time to time.

3. The declaration of Shri Hardhul Singh Bhole (sl. no. 4 above) as qualified for the post of Tahsildar and his consequent appointment as such, is subject to the condition that he should qualify the tahsildar's examination in Urdu paper within 6 months from the date of issue of this letter.

Sd/-

Deputy Secretary to Govt., Haryana.

Revenue Department."

(emphasis added) From Annexure A, it is clear that the date of the substantive appointment of the petitioner cannot be before 3.1.78.

10. Standing Order No. 12 of 1909 (Part A), as stated above, mentions two classes of "Tahsildar candidates": (i) Class A (or direct) and (ii) Class B. We are not concerned with class B tahsildar. Class A (or direct) candidates, according to Order No. 12, "must belong to families of tried loyalty and distinguished services, and must be of good social status and influence in the country or members of a class the introduction of which into the public service it is considered desirable especially to encourage....."

(emphasis added) The petitioner submits that Standing Order No. 12 which is a part of the Tahsildari Rules does not survive the Constitution. We do not feel called upon to decide this point in this case as the petitioner cannot be allowed to raise the point for two reasons:-

(i) The basis of the petitioner's case all throughout, at all stages, was Annexure P. 5 based on the Tahsildari Rules and Standing Order No. 12. Even now he does not claim his appointment on any other basis;

(ii) Secondly, if the Tahsildari Rules and the Standing Order No. 12 are held to be ultra vires, the letter of acceptance (or letter of appointment as the petitioner erroneously calls it) which was issued under the provisions of the said Rules, will disappear and the petitioner will have no legs to stand on.

11. Rule 11 of the Tahsildari Rules has been quoted above. It provides for the seniority of the members of the service. It is to be determined by the date of the substantive appointment in the post.

The petitioner however claims that he is entitled to get the benefit of his service in the army during the Emergency, under the provisions of the Emergency (Concession) Rules;

Sub-rule (ii) of Rule 4 of the Emergency Concession Rules reads:

"4 (ii) Seniority:-The period of military service mentioned in Clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service."

Military service is defined in rule 2 thus:

"For the purpose of these rules, the expression "military service" means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Art. 352 of the Constitution of India on the 26th October, 1962 in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said Emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service. A perusal of the rule quoted above shows that the Concession in seniority is admissible (i) in respect of military services rendered during the operation of emergency only and not for any military services after the termination of emergency and (ii) only if the service in the military is as "enrolled or commissioned service in any of the three wings of the Indian Armed Forces." The military service of the petitioner from January 11, 1962 to July 1, 1968 and again from 31.10.1968 to 22.9.1974 was not during the operation of emergency in question. Further the petitioner's service from October 31, 1969 to September 22, 1974 was not as an "enrolled or commissioned service in any of the three wings of the Indian Armed Forces." During this period the petitioner has been allowed the benefit of seniority under the Emergency Concession Rules by Order dated 14.12.78 of the Financial Commissioner, Revenue, Haryana in the following terms:

"In pursuance of provisions of rule 4 (i) and (ii) of the Punjab Government National Emergency (Concession) Rules, 1965 issued vide Punjab Government Notification No. GSR-160. Const/Art. 309/65, dated the 20th July 1965 as amended vide Haryana Govt. Notification No. GSR-182/Const. Art. 309/ Amd (2)-76, dated the 4th August, 1976. Shri Randhir Singh Dhull, 'a' Class Tahsildar is allowed the benefit of service rendered by him in the Army during the National Emergency as an Emergency Commissioned Officer for the period from 29th April 1963 to 10th January, 1968 towards seniority and his seniority is fixed immediately below Shri Jaswant Singh Rajput among the 'A' class Tahsildars. His date of appointment as Tahsildar will be 27th May 1973.

2. Further his pay is fixed at Rs. 450/- P.M. in the scale of Rs. 350-25-500/30-650/30-800 with effect from 8.2.78 (his actual date of appointment to the post of Tahsildar) and his next increment raising his pay to Rs. 475/-P.M. is 1.2.79. He will not be entitled to any arrears of pay as a result of the above fixation prior to 8.2.1978.

3. The above period of Army Service shall count for pension only after Shri Dhull has deposited the bonus or gratuity received by him from military authorities.

12. The petitioner has not been able to point out that any of the respondents No. 3 to 18 were given seniority from the date of acceptance. In fact none of them was accepted alongwith him by letter dated 13.9.74.

13. The petitioner's further grievance is that the military service of the Captain K. Phool Singh, Captain Khem Singh Lathar, Shri Inder Singh, Captain A. R. Kohar and Captain B. K. Batra mentioned in para 8 of the petition have been counted for the benefit of their seniority etc. The petitioner's grievance is baseless. Their cases were different. None of them was given the benefit of his service from the date he joined as a 'Candidate'. The respondent in the counter affidavit asserts that not a single ex-army service Tahsildar Candidate has been allowed the benefit of military service from the date of acceptance as class 'A' Tahsildar candidate.

14. The petitioner has not been able to make out any case of discrimination and violation of Arts. 14 and 16 of the Constitution. The petition has no merit and is dismissed. We however leave the parties to bear their own costs.

15. Mr. Bhagat, the learned Counsel appearing for the Respondent, submitted that the Writ Petition was barred by res judicata and in support of his submission he cited a decision of this Court reported in AIR 1970 S. C. 898. We need not examine the submission for two reasons:

(i) We have decided the case on merit against the petitioner and (ii) the petitioner obtained permission of this Court to file a Writ Petition vide Order 5.9.79 in S. L. P.

No. 4475 of 1979 (Annexure P. 1) N.V.K. Petition dismissed.