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

Judgment reserved on July 02, 2015
Judgment delivered on July 29, 2015

\+   **W.P.(C) 3416/2002 & W.P. (C) 10209/2009**

P.C. SHEKHAR ...... Petitioner
Through: Petitioner in person
versus
THE NEW INDIA ASSURANCE CO. LTD.
..... Respondents
Through: Mr. Saurabh Prakash, Adv.

With

P.C. SHEKHAR ...... Petitioner
Through: Petitioner in person
versus
THE NEW INDIA ASSURANCE CO. LTD. & ORS.
..... Respondents
Through: Mr. Saurabh Prakash, Adv.

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. By this common order, I shall dispose of two writ petitions, as they involve the same parties with common facts and the prayers are inter-connected.

2. The writ petition being W.P.(C) 3416/2002, which was initially filed in the year 2002, was amended and in the amended petition filed, in the year 2006, the following reliefs have been claimed:

> "*(a) To issue a writ of Certiorari or any other appropriate writ for quashing the impugned orders of*

Respondent No. 1 and bearing number DRO-I/Int-Audit/R.K. Bhatia/VKS/98-81 Dated 17-04-98 (Annexure P-14), Pension Cell/RGH/99 dated 11/5/99 (Annexure P-17) and DRO-I /PERS/CL-I CELL/SG/GIMP/2001 dated 28-12-01 (Annexure P-19) as incorrect, arbitrary and illegal;

(b) issue a Writ of Mandamus or any other appropriate writ directing the Respondent that the retirement benefits admissible to the petitioner under the General insurance (Employees) Pension Scheme 1995 be assessed on the basis of the combined qualifying service under the Central Government and qualifying service under the New India Assurance Company Limited;

(c) To issue a writ of Certiorari for quashing the Charge sheet dated 03-05-2006 and letter dated 22-06-2006 for proceeding on inquiry against the Petitioner on Charge Sheet [Annexure P-41 and Annexure P-45 respectively] with is improper, arbitrary, illegal, prompted by malice and arising out violation of this Hon'ble Court's directive to positively decide on the status of SVRS of Petitioner latest by 13-01-2005.

(d) To issue directions to the Respondent No.1 to release all terminal benefits including pension to the Petitioner with effect from 04-07-2006 in pursuance of the Proviso

to Para 30(2) of General Insurance (Employees) Pension Scheme, 1995 by declaring his retirement as deemed;

(e) To declare the denial of SVRS by the Respondent No.1 as illegal, arbitrary, improper and malafide and issue directions to the Respondent No.1 to release his terminal benefits commensurate with the SVRS;

(f) To impose appropriate cost on the Respondent No.1 for protracting the justice to the Petitioner and causing extreme hardship to his life and liberty for over more than 10 months;

(g) To direct the Respondent No.1 to identify the officers responsible for blatant violation of judicial directives and to initiate appropriate administrative action against them for misusing their authority;

(h) To direct the Respondent No.1 to pay salary to tine Petitioner from November 2005 till his relieving from services due to compulsory waiting arising out of inaction of Respondent No.1 together with all benefits arising out of employment which were denied due to protracted SVRS;

(i) To direct the Respondent No.1 to release salary arrears for 41 months and issue a TDS Certificate to the Petitioner for the financial year 2005-2006;

(j) To issue such other writ or order or direction as this Hon'ble Court deems fit and proper in the facts and circumstances of the case".

3. Insofar as W.P.(C) 10209/2009 which was filed in the year 2009

is concerned, the petitioner has sought for the following reliefs:

> *"(a) To issue a writ of Certiorari or any other appropriate writ for quashing the impugned order of the Disciplinary Authority (Respondent-3) dated 1109-2008 and order of the Appellate Authority (Respondent-2) dated 26-02-2009 (communicated vide letter dated 23-03-2009) terminating the petitioner from services as incorrect, arbitrary, fraudulent and illegal;*
>
> *(b) to issue a Writ of Mandamus or any other appropriate Writ directing the respondents to transfer back the service records of the petitioner to Delhi and relieve the petitioner immediately from the services with his correct designation as 'Deputy Manager' with the following benefits:*
>
> *(i) Ex-gratia amount of SVRS held up fraudulently ever since 09-03-2004 by the respondents to be paid as on the date of relieving the petitioner by the respondents;*
>
> *(ii) Salary arrears withheld fraudulently by the respondents ever since 09-01-2006 alongwith interest thereon;*
>
> *(iii) Salary from November 2005 till the date of relieving the petitioner by the respondents after rectifying the manipulation of salary records together with interest from the date of their accrual due to fraudulent withholding and compulsory waiting;*
>
> *(iv) Provident fund, Gratuity and Leave Encashment on*

accumulated leave of 240 days after rectifying the manipulation of salary records;

(v) Pension from the date of relieving the petitioner from services after rectifying the manipulation of salary records without prejudice to his part service under CWP-3416/2002;

(vi) Any other terminal benefits under the Rules;

(vii) Monetary value of Leave Encashment and LTS declined fraudulently beyond 60 days from the date of notification of the Special Voluntary Retirement Scheme on 01-01-2004;

(viii) Interest and penalty to the Income Tax Department on understatement of salary and evasion of tax;

(ix) Remittance of deductions made from the taxed salary of the petitioner to various authorities on whose behalf the deductions were carried out but fraudulently withheld together with interest and penalty for delayed remittance;

(c) to issue a Writ of Mandamus or any other appropriate Writ directing the respondents to pay damages to the petitioner arising out of fraud and misrepresentation;

(d) to issue a Writ of Mandamus or any other appropriate Writ directing the respondents to pay compensation towards defamation, degradation, intimidation from better employment prospects commensurate with petitioner's professional qualification and mental trauma and torture towards the petitioner and his aged mother;

(e) to award costs to the petitioner;

(f) to issue any other directions deemed appropriate by this Hon'ble Court".

<u>The impugned orders:-</u>

4. The letter dated April 17, 1998, is a communication from the respondent No. 1 whereby the petitioner was informed the rejection of his request for inclusion of past service rendered by him in the Government of India for pension and other benefits; the letter dated May 11, 1999, whereby the respondent No. 1 has communicated that in terms of the provisions of the General Insurance (Employees) Pension Scheme, 1995 ('Pension Scheme, 1995', in short) , the petitioner is not eligible for benefit of service rendered by him in the Ministry of Commerce, and letter dated December 28, 2001, whereby, the petitioner was communicated by the respondent No. 1 that his past service in the Ministry of Commerce for the purpose of voluntary retirement under the pension scheme cannot be considered; the memorandum dated May 3, 2006 issued by the respondent, whereby the petitioner was issued charge sheet wherein three Articles of Charge were framed against him; and communication dated June 22, 2006, whereby the Disciplinary Authority has decided to hold domestic enquiry against the petitioner in terms of memorandum of charges dated May 3, 2006 by appointing Enquiry

Officer and Presenting Officer.

5. The details of the impugned orders in W.P.(C) 10209/2009 are; the order dated September 11, 2008, whereby the Disciplinary Authority i.e. the respondent No. 3 removed the petitioner from the services of the respondents and the order dated February 26, 2009, whereby the Appellate Authority rejected the appeal of the petitioner.

<u>The facts:-</u>

6. The brief facts are, on the death of his father, the petitioner was given a compassionate appointment as an 'Investigator' in the pay scale of Rs. 425-700/- with usual allowances vide order dated August 7, 1979 in Ministry of Commerce, Government of India (respondent No.3). He was appointed on substantive basis on January 13, 1982. While the petitioner was serving in the Ministry of Commerce, he being a Chartered Accountant, applied for the post of Assistant Administrative Officer in the respondent No. 1 company, which was a subsidiary of the respondent No. 2 company, in the pay scale of Rs. 530-1050/- through proper channel. The petitioner was given the offer of appointment and he joined the respondent No. 1 company on March 12, 1986, with the probation period of one year. In the meantime, the petitioner submitted technical resignation with the respondent No. 3 on March 10, 1986. At the time of the petitioner's appointment in the company on March 12,

1986, there was no pension scheme. The petitioner had not received any retirement benefits from the Government for the service rendered up to March 10, 1986. However, Pension Scheme, 1995 was introduced by the respondent No. 1 on June 28, 1995 and the petitioner, by exercising an option under the scheme, was required to surrender company's contribution to Provident Fund together with interest thereon, from the date of his appointment. The Pension Scheme, 1995 was made applicable for the service rendered prior to January 1, 1986 in terms of Chapter II of the scheme read along with Explanatory Memorandum. Suffice to state, the petitioner was covered under the Pension Scheme, 1995 w.e.f. his date of appointment in respondent No. 1. It may be stated here that the petitioner was confirmed in the service of the company as A.A.O. It is the case of the petitioner that the Department of Pension and Pensioners' Welfare has, from time to time, issued instructions with regard to the counting of the past service. On August 22, 1996, he made a representation to respondent No. 1 for counting of the past service in Ministry of Commerce (respondent No.3), which was followed by the reminder dated March 2, 1998. Unfortunately, said representations were rejected by the respondent No. 1 stating that the appointment of the petitioner in the services of the company was through open competition and not by way of transfer by Government of India on permanent absorption basis, therefore, it is not possible to consider the request made by the petitioner. On receipt of such a correspondence, the petitioner made further representation dated May 12, 1998 to the respondent No. 1, with a request to forward the same to the respondent No. 4 i.e. the Ministry of Personnel, Public Grievances and Pensions. That apart, the petitioner had also made a representation directly to the respondent No. 4 on October 22, 1998. No response was received from the respondent No. 4 on the request made by the petitioner. In the meantime, on January 9, 1999, the petitioner had sought voluntary retirement on the ground that he had completed 20 years of service. A further request was made on February 8, 1999. The respondent No. 1, on May 11, 1999, conveyed to the petitioner that as per the existing provisions of the Pension Scheme, 1995, he is not eligible for the benefit of service rendered by him in the Ministry of Commerce, Government of India. A similar communication was made to the petitioner on December 28, 2001 inasmuch there is no provision in the company's pension scheme to add the past service rendered in the Ministry of Commerce, Government of India. That apart, an observation was made by the respondent No. 1, based on the decision of Central Administrative Tribunal that Government may sanction pro-rata pension to their employees, who resigned the Government service to join PSU. Be that as it may, on May 17, 2002, the petitioner filed the present writ petition.

7. The reliefs prayed for in W.P.(C) 3416/2002 were primarily related to the challenge to the orders dated April 17, 1998, May 11, 1999 & December 28, 2001. In any case, I have reproduced the prayers now made in the amended petition, which incorporates the prayers as made by the petitioner initially in W.P.(C) 3416/2002. After the filing of the petition, the respondent No. 1 introduced a Special Voluntary Retirement Scheme (SVRS), 2004. The petitioner, accordingly, on January 14, 2004, applied for voluntary retirement under SVRS, 2004. It is the case of the petitioner that the authorities have issued certificates that no disciplinary proceedings are pending against him. Audit clearance, vigilance clearance were also taken in favour of the petitioner. He would state, that even though, the petitioner was not to be relieved without a substitute, the Chairman and Managing Director of the respondent No. 1, approved the request of the petitioner for voluntary retirement under SVRS, 2004. During the submission, it was stated that the noting and approval of CMD were not provided to him under RTI. On July 8, 2004, the petitioner had sent a reminder, calling upon the authorities in the respondent No. 1 to expedite his request for SVRS at the earliest. During the hearing on October 6, 2004, a submission was made on behalf of the petitioner that the petitioner has submitted an application for acceptance

of VRS which is pending consideration with respondent No. 1. This Court had called upon the learned counsel for the respondent to take instructions on the same. Thereafter, effective hearing in the writ petition could take place only on February 28, 2006 when a submission was made on behalf of the petitioner that the inclusion of past service in the Central Government would not be pressed if the respondent company accepts the request of the petitioner for relieving him under SVRS and in that regard, the reliance was placed on the letter dated December 28, 2004 of the respondent No. 1, in which it was stated that the competent authority was willing to consider the SVRS application without taking into account his previous service with Government of India into consideration for the purpose of terminal dues including pension, without prejudice to the stand taken in W.P.(C) 3416/2002. It is averred in the writ petition that a letter dated March 22, 2006 on SVRS was addressed to the advocate of the respondent No. 1. When the matter came up for hearing, on March 23, 2006, a statement was made by the learned counsel for the respondent that it is not possible to accede to the request of the petitioner relieving him under SVRS. On such a submission, the learned counsel appearing of the petitioner, on instructions stated that the petitioner would be approaching the respondent seeking voluntary retirement in terms of Pension Scheme, 1995, as per which, an officer who has put in 20 years of qualifying service can seek voluntary retirement from the service. It was the case of the petitioner during the hearing that he had put in 19 ½ years of service and would be entitled to the benefit of Regulation 18, which provides rounding off the services for broken period of service if they are in excess of six months. Accordingly, the Court directed the petitioner to approach the respondent with an application under Regulation 30, within a period of two weeks. In such an event, the respondent was to pass appropriate order having regard to the circumstances of the case within two weeks of the receipt of such an application. The petitioner accordingly submitted his request for VRS in terms of the Court's order on April 3, 2006.

8. In the meantime, a further development took place, that on August 11, 2005, the petitioner was transferred to Mumbai and was called upon to take new assignment on or before September 10, 2005.

9. On receipt of the communication dated August 11, 2005, the petitioner made a representation dated August 18, 2005 to the respondents for cancellation of transfer order issued on August 11, 2005. He had given his mother's illness as one of the reasons. He had also highlighted that he had opted for SVRS in January 2004 and stated that it was becoming difficult for him to move out of station intermittently with

the office work and abandon his mother to her own self care. He had also made a request that in the eventuality, the cancellation of transfer out of Delhi is not possible, then, he be relieved from the company by accepting his retirement.

10. It is the case of the petitioner that on May 3, 2006, despite the Court's order, voluntary retirement order was not passed but a charge sheet was issued wherein, it was alleged that the petitioner remained unauthorizedly absent without prior approval of the competent authority from September 19, 2005 and also failed and neglected to abide by the lawful orders of the superior conveyed to him vide letter dated August 11, 2005. It was also alleged that the petitioner remained absent from office from September 19, 2005 without prior sanction by the superiors and not reported at his new assignment and thus, set a bad example amongst the employees of the organization and his conduct was unbecoming of a public servant. It is noted, when, on a CM No. 660-661/2006, proceedings were held on May 16, 2006, a statement was made, on behalf of the respondent No. 1 that the request of the petitioner for VRS cannot be acceded to in view of proposed disciplinary proceedings since charge sheet has been issued on May 9, 2006.

11. It is the case of the petitioner that he filed a detailed reply in defence to the charges levelled against him vide his letter dated May 29,

2006. On June 22, 2006, the petitioner received a letter from the respondent No. 1 stating that enquiry proceedings would be conducted against him since the charges framed against him were denied. The petitioner in the petition has highlighted the proceedings held in this Court on June 1, 2006 wherein, a statement was made by the learned counsel for the respondent that he is making efforts to settle the matter amicably and to the satisfaction of the petitioner and failing which, the counter affidavit shall be filed. It is his case that the respondent No. 1 did not furnish any reply for the rejection of VRS under para 30 to the petitioner in pursuance of the directives of this Court on May 16, 2006. It is his case that deemed retirement under proviso to para 30(2) became effective from July 2, 2006 by virtue of specific application moved by the petitioner on April 3, 2006. It is the petitioner's case that the Enquiry Officer Sh. Rajesh Kalra commenced the preliminary enquiry on May 14, 2008, and concluded the same on May 29, 2008. Thereafter, the petitioner submitted his written brief to the Enquiry Officer. On July 21, 2008, the Enquiry Officer issued the enquiry report. The petitioner submitted representation to the disciplinary authority against the enquiry report on August 18, 2008. On September 11, 2008, order removing the petitioner was issued. On October 3, 2008, the petitioner filed an appeal against the termination order to the Appellate Authority, who upheld the removal order of the petitioner on February 26, 2009, which was conveyed to the petitioner on March 23, 2009. It is the order of the disciplinary authority dated September 11, 2008 and the order of the Appellate Authority dated February 26, 2009 which are the subject matter of the W.P.(C) 10209/2009.

12. On the other hand, it is the case of the respondent No. 1 that the present petitions have been filed by the petitioner, praying for counting of service rendered by the petitioner with the Government of India, for the purpose of determination of his eligibility and computation of pension. During the pendency of the petitions, the respondent announced the Special Voluntary Retirement Scheme, 2004. The scheme, inter alia, required that the concerned officer should apply unconditionally thereunder. Though the petitioner applied for the retirement thereunder, while doing so, he made his request conditionally upon reckoning of his past service with the Government for the purpose of benefits thereunder. Since the respondent was of the view that he was not entitled to count such service with the Government and since his request was conditional, his application for SVRS could not be accepted. During the course of the hearing of this petition, on October 6, 2004, upon the request of the counsel for the petitioner, this Court directed the counsel for the respondent No.1 to seek instruction as to whether the

petitioner's request for SVRS could be accepted without prejudice to the question raised in the petition. The respondent No. 1 would highlight that the competent authority was willing to consider the application under SVRS of the petitioner without taking his previous service with the Government of India into consideration, for the purpose of terminal dues including pension, without prejudice to the stand taken in the writ petition. The respondent No. 1 stated that despite the said statement, the petitioner did not ask that his application be so considered; neither did he ask this Court to pass any orders nor even did he address any communication to the respondent asking that his application be so considered in accordance with what had been stated in the said letter. The respondent No. 1 would highlight that when the matter came up for hearing on February 28, 2006, the counsel for the petitioner submitted that he would not press his claim for counting of his past service on the condition that the respondent accept his request for being relieved from service under the SVRS. In making such submission, he had relied upon the letter of the respondent No. 1 dated December 28, 2004. The respondent No. 1 has also highlighted the proceedings of the hearing that took place on March 23, 2006, when it was submitted that it was not possible to accede to the petitioner' request for relieving him under SVRS. The respondent No. 1 also stated that in terms of the statement made by the counsel for the petitioner that the petitioner would approach the respondent No. 1 seeking VRS in terms of Pension Scheme, 1995 on the ground that the petitioner having put in 19½ years of service would be entitled to the benefit of a provision, which provides rounding off the services of broken period of services, if they are in excess of six months. The petitioner, was accordingly, permitted to do so by this Court and the respondent No. 1 was directed to pass appropriate orders thereon. The respondent No. 1, has in its reply, referred to order dated August 11, 2005 vide which order, the petitioner was transferred to Mumbai office of the respondent. The respondent No. 1 also referred to the letter dated August 18, 2005 of the petitioner, citing various difficulties in reporting to Mumbai and for withdrawal of transfer order. The respondent No. 1 would submit that from a reading of letter dated August 18, 2005, the petitioner seems to be requesting that he should be retained in Delhi until he is relieved under the SVRS or else to be relieved forthwith under the SVRS. According to the respondent No. 1, the said request was not a request for resignation. The respondent No. 1 has also stated that in view of that, the respondent No. 1 was unable to act on the said request. The respondent No. 1 also stated that the petitioner had not reported at the place of posting. It is the case of the respondent No. 1 that since the petitioner had not reported to the place of posting at Mumbai, he was charge-sheeted on May 9, 2005. The respondent No. 1 also highlighted the filing of the CM No. 12951/2006 in order to bring closure to the matter. It is the case of the respondent No. 1 that the petitioner had never wished to resign from service. Rather all his communications have been to request, either he be given the benefit of rounding of or SVRS or the benefit of the Pension Scheme, 1995, which according to the respondent No. 1 was not possible to accede to. They have also highlighted that counting of past service in the Government was given up by the counsel for the petitioner on February 28, 2006. Even his entitlement to SVRS had also been argued by his counsel but had also been given up on March 23, 2006.

13. Mr.P.C.Shekhar, the petitioner, who appears in person, insofar as his plea of counting of his past service is concerned, would rely upon the various notifications issued by the Government of India in that regard. According to him, this includes, the OM dated September 12, 1985, OM dated March 31, 1987, OM dated May 30, 1995. He states, he is entitled to the benefit of counting of past service put in by him with the Government of India, for which, he made representation to the respondent No. 1 as well to respondent No. 4. Unfortunately, the replies have been given by the respondent No. 1 only. He would state that the response of the respondent No. 4 in that regard, would be relevant as any

benefit of the past service to the petitioner would be in the nature of settlement between employers as the Ministry of Commerce would pay the pension contribution for the period the petitioner had worked in that Ministry. He seeks that the relief as prayed for in that regard be granted by this Court.

14. That apart, insofar as the grant of SVRS/VRS is concerned, he states that the respondent No. 1 having introduced SVRS on January 1, 2004 for retirement after 10 years and the petitioner having applied for the same on January 14, 2004, the respondents were required to communicate the decision taken on the said application for SVRS. He reiterates the clearances given by the various authorities under the respondent No. 1 including the decision taken by Chairman and Managing Director of the respondent No. 1 for grant of SVRS to the petitioner. Unfortunately, despite the same, there was no communication conveying the decision. He would state that even the letter dated December 28, 2004, wherein, it was stated that the competent authority was willing to consider the SVRS application without taking into account his previous service with the Central Government, without prejudice to the stand in these proceedings had not been acted upon. Nothing precluded the respondent to take an action in favour of the petitioner as the petitioner was in any case entitled to the retirement after

10 years of service in terms of the said scheme. He would highlight that he vide his letter dated July 8, 2004, had reminded the respondent No. 1, of his SVRS application and also, in the event of additional benefits arising of the High Court verdict, the same be settled after the judgment. He would also state even this Court on October 6, 2004, had directed the counsel for the respondent No. 1 to take instruction on VRS without the same in any manner prejudicing the question raised in the petition. He states that even the application made by him on April 3, 2006 in terms of the statement made by the learned counsel for the petitioner seeking voluntary retirement under the Pension Scheme, 1995 should have been considered positively. Rather, the issuance of charge sheet for not obeying the order of transfer was an act of mala fide as it is on record that even before the issuance of transfer order, the petitioner had shown the desire to take voluntary retirement from the company. According to him, there was no bona fide reasons for the respondents to deny the voluntary retirement to the petitioner. In fact, it is his case that even against the transfer order, he has shown genuine reasons of his inability to go to Mumbai. The said reasons have also not been considered by the respondents in proper perspective. According to him, it is an admitted case that the date on which he was relieved on September 12, 2005, he had already completed more than 19½ years of service which could

have been rounded of as 20 years for being eligible for VRS under the Scheme of 1995. He would further state that when he submitted his SVRS/VRS applications, there was no departmental proceeding pending which can be said to be an impeding factor for rejection of the applications. Even otherwise, the reasons for rejecting the request dated April 3, 2006 for not complying with the order of transfer, is unjustifiable, when it is on record, requests were being made by the petitioner from time to time, for being relieved after the acceptance of the SVRS/VRS. He would in the last state, he should be deemed to have been voluntary retired, at least from September 12, 2005 when he was purported to have been relieved by the respondent No. 1 for his joining Mumbai. He would rely upon the judgments of ***R.L.Marwaha Vs. Union of India and Ors. (1987) 4 SCC 31, TS Thiruvengadam Vs. Secretary to GOI, Ministry of Finance, Department of Expenditure and Ors., (1993) 2 SCC 174, Bank of India Vs. O.P.Swaranakar, (2003) 2 SCC 721, State of Haryana and Ors. Vs. S.K.Singhal, (1999) 4 SCC 293, Dinesh Chandra Sangma Vs. State of Assam, (1978) 1 SCR 607,*** and ***Sukhdev Singh and Ors. Vs. Bhagatram Sardar Singh Raghuvanshi and Anr., AIR 1975 SC 1331*** in support of his contention.

15. Mr.Saurabh Prakash, learned counsel appearing for the respondent No. 1, would reiterate the stand taken by the respondent No. 1 in the

counter affidavit. That apart, he would highlight that the question of counting of past service had been declined by the respondent No. 1. He would also highlight as the petitioner has not completed 20 years of service, his case for voluntary retirement could not have been considered. He would state that the petitioner has been insisting upon counting of the past service for the purpose of eligibility. He states that since the counting of past service was rejected, it could not have been considered. Vide letter dated December 28, 2004, the respondent had stated before this Court that the competent authority is willing to consider the case of the petitioner under SVRS without taking into consideration his previous service. However, the petitioner did not ask that his application be considered so. He would highlight the proceedings held on March 23, 2006 in this Court. He would justify the issuance of the charge sheet to the petitioner for not following the order of transfer. He states that in his representation, the petitioner has shown his desire to continue in Delhi till such time, he is relieved under SVRS, and since it is not a case of resignation, and the petitioner was not entitled to SVRS, the respondent was unable to act on the said request. He further states that the petitioner's request for cancelation of transfer order was considered vide order dated September 12, 2005. Despite direction to report on September 19, 2005, the petitioner did not report to the place of posting. Accordingly, a charge sheet was issued, which resulted in his removal. That on the date, when the petitioner was relieved on being transferred to Mumbai, the petitioner had put in slightly more than 19½ of service, which is short of 20 years for being considered for VRS. According to him, no doubt, interpretation given by various courts where an employee has completed more than 19½ years of service, if the broken periods is more than six months, it shall be treated as one year which would enure to the benefit of the petitioner, and should have been treated as 20 years, was a declaration came after the rejection of the request for VRS by the respondent No. 1. He concedes, the said view has been upheld by the Supreme Court in a later judgment in the case reported as ***2014 (3) LAJ 513 (SC), State Bank of Patiala Vs. Pritam Singh Bedi and Ors.***

16. Having considered the submissions made by the petitioner, who appears in person and learned counsel for the respondent(s), insofar the issue of counting of past service by the respondent No. 3 is concerned, the following instructions have been issued by the respondent No.4:

(a) OM dated August 29, 1984:

> *"Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under*

the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the autonomous body/Government, as the case may be."

(b) OM dated March 31, 1987:

"(i) The terms and conditions of absorption of Central Government employees in the Central Autonomous Bodies will be, as applicable to those permanently absorbed in the public sector undertakings. In both the cases the instructions laid down in the Department of Personnel and Training O.M. No. 28016/5/85-Est. (C), dated the 31st January, 1986, referred to above, will apply;

(ii) Those absorbed in the autonomous bodies having

pension scheme shall have an option to receive pro rata retirement benefits or continue to have the benefit of combined service under the Government and in the autonomous body subject to the conditions laid down in the Department of Personnel and A.R's O.M. No. 28/10/84-PU, dated the 29th August, 1984 and 12th September, 1985 (published in Swamysnews as SI. Nos. 118 and 203 of October, 1984 and October, 1985 respectively). Such option should be exercised within six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined service.

(iii) Encashment of earned leave shall be admissible up to the Maximum limit of 240 days. Half-pay leave will stand forfeited.

(iv) In respect of officers who are already on deputation to autonomous bodies, the existing terms and conditions of their deputation will operate and no extension of deputation beyond the periods specified in their deputation orders should be allowed. In case a Government employee does not return to his parent Department during or after the sanctioned deputation period, he will be deemed to have been permanently absorbed in the autonomous body on the date of expiry of deputation period."

(c) OM dated May 30, 1995, which inter alia stipulates as under:

"The matter has been considered in consultation with the Ministry of Finance (Department of Expenditure). It is

clarified that discharge of pro rata pensionary liability by the parent organization is necessary in all cases of mobility of personnel from Government to Autonomous Bodies and vice versa, if the employee opts for the pensionary benefits based on combined service in accordance with the above-menitioned Office Memorandum. The settlement of payments of pro rata pension, etc., is required to be made between a Government department and an autonomous body and not between Government and individuals. The question of employee's actual entitlement at the time of such mobility is not relevant. The amount should appropriately be calculated pro rata based on length of service rendered and would compromise of the terminal gratuity or service gratuity or pension, as the case may be, and retirement gratuity for the employees on pensionable establishments."

In any case, this Court is of the view, for counting of past service, the concurrence of the parent office i.e. Ministry of Commerce is mandatory as the Ministry has to discharge its obligation of pensionary benefits for the period for which the benefit is sought. No doubt, the petitioner did make a representation to the Ministry of Personnel, Public Grievances and Pensions (respondent No.4). It appears, no response was received for the same nor any affidavit has been filed in these proceedings. Rather, a statement was made on July 8, 2003 that the respondent Nos. 3 and 4 do not wish to file any counter affidavit.

17. As no decision has been taken by the respondent No. 3 till date, the petitioner would be at liberty to give a further representation to the respondent No. 3 within a period of two weeks from the date of the receipt of copy of this order. The respondent No. 3 needs to take a decision whether the services put in by the petitioner between August 3, 1979 to March 10, 1986, can be counted as service for the purpose of pensionary benefits under the respondent No. 1 within four weeks thereafter. The decision so taken be communicated to the petitioner as well as to the respondent No. 1 for further action, if any.

18. Insofar as the other issue of grant of SVRS/VRS is concerned, there is no dispute to the fact that the petitioner had submitted the application pursuant to the SVRS, 2004 on January 14, 2004. As per the petitioner, the scheme contemplates retirement after 10 years under SVRS.

19. Insofar as the stand of the respondent that the petitioner submitted his application subject to his being given benefit of counting of past service being conditional, his application could not be so considered, I may point out here that even otherwise, without counting of the past service, the petitioner was eligible for being considered for SVRS as he had put in 10 years of service. Be that as it may, on July 8, 2004, the petitioner in his representation did say that he be granted SVRS and in

the event of additional benefits arising out of High Court's verdict, the same be settled after the High Court's verdict. In other words, his request for SVRS be considered without taking into account the past service rendered in the Government of India. In fact, such was the understanding during the hearing held in W.P.(C) 3416/2002 on October 6, 2004.

20. That apart, even that was the understanding of the respondent No. 1 in the letter dated December 28, 2004, which I reproduce hereunder:

> *"This has a reference to your letter dated 03.12.2004 enclosing an opinion dated 02.12.2004 of Advocate Mr S Prakash regarding the order passed by the Hon'ble High Court on 06.10.2004.*
>
> *We would like to inform you that the case of Mr. PC Sekhar as also the order dated 06.10.2004 were placed before the Competent Authorities.*
>
> *The Competent Authority is willing to consider the application under SVRS of Mr. PC Sekhar without taking his previous service with Government Of India into consideration for the purpose of terminal dues including pension, without prejudice to the stand taken in the writ Petition No. 3416/2002.*
>
> *Kindly examine to whether the following points was argued before the Hon'ble Court.*
>
> *For releasing pension to an eligible officer, depending upon the quantum to be released as pension (which*

again is based on the number of years of service rendered) we have to purchase annuities from LIC. In the instant case since no contribution is possible from the Government of India in respect of service rendered by an officer with them; if we count : this service also, then we have to additionally buy annuities which will be an additional burden to our company

These points may be clarified to the Hon'ble High Court. Please keep us informed of the developments in this matter"

21. Despite the above-said, the consideration was not given. Rather in the subsequent proceeding on March 23, 2006, a statement was made on behalf of the respondent No. 1 that it was not possible to accede to the request of the petitioner for reliving him under SVRS. It is not known, what were the reasons, which weighed with the competent authority not to accede with the request of the petitioner for being relived under SVRS when the petitioner had sufficient service of 10 years for retirement under SVRS, and the stand of the respondent No. 1 that by such time, the time for SVRS has long passed and respondent No. 1 could not permit him to avail that option, is not convincing as the petitioner had expressed himself for getting relieved from the respondent No. 1 in January 2004 itself when he submitted his application for SVRS. Even the request for VRS vide letter dated April 3, 2006 need to have been accepted, the

rejection of the same that charge sheet has been issued for not complying transfer order is hyper-technical. He rightly sought cancellation of the transfer order on the ground that his application for SVRS is pending and also for his mother's illness. I reproduce the following from his representation dated August 18, 2005:-

> *"I am presently living with my mother at her own residence at Delhi. My mother is aged 70 years and my father is not alive. Since I am not married and I do not have brothers or sisters, my mother is fully and solely dependent on me. There is nobody else except me to look after my mother at her old age in respect of all her requirements whether related to her physical movements, administrative requirements of the house she owns, mental companionship or attendance to her health related matters by known physicians.*
>
> *During the past few years, my mother is suffering from very acute problem of 'uterus prolapse' because of which she is forced to spent most of the time in sitting or sleeping posture. Her problem accentuates if she stands or walks around. Due to this problem she also has a need to make use of the toilet very often as per her convenience. Doctors have not recommended her for an operation because of her age and my mother is also not mentally prepared for any operation due to her own apprehensions and fear.*

This apart, my mother has also been suffering from 'High Blood Pressure' and on three occasions, in the past, she had fainted on the road when I was away from Delhi during my audit assignments. During these occasions she was escorted back home by passer-by strangers out of sympathy. I had to learn these developments only after coming back to Delhi from my official tour, as she did not want me to panic when I was out of station.

In view of these difficulties and my indispensable need for staying with my mother all the time, I had opted for SVRS in January 2004 as I was finding it difficult to move out of station intermittently in connection with the office work and abandon my mother to her own self care. My SVRS application has not been disposed as yet by the company despite the directions of the Delhi High Court dated 17-11-2004 to consider my SVRS application without prejudice to my contentions for the combined service pleaded before Court."

The reasons given were compelling and justified. That apart, I note, on June 1, 2006, a statement was made by the learned counsel for the respondent to amicably settle the matter to the satisfaction of the petitioner. Further, the plea that the petitioner was not eligible to seek VRS is also not tenable in view of the interpretation given by Karnataka

High Court in the case of ***New India Assurance Co. Ltd. Vs. G.S.Kamath, Writ Appeal No. 1721/2006 (S-R)*** decided on December 6, 2006, wherein, the Division Bench of Karnataka High Court was considering in an appeal the judgment of the learned Single Judge in Writ Petition 13215/2005, whereby the learned Single Judge has allowed the writ petition wherein a challenge was made by the employee, for being denied, the pension after he was relieved by granting voluntary retirement under SVRS 2004. The stand of the appellant before the learned Single Judge was that the respondent/employee had not completed 20 years of qualifying service as he had completed 19 years, 8 months and 6 days was negated. The learned Single Judge, on an interpretation of clause 18, held that the same shall be applicable and the fraction of a year can be taken as one year as it was more than six months and in that case, the respondent can be deemed to have completed 20 years of qualifying service. The Division Bench upheld the view taken by the learned Single Judge. On the other hand, I have been informed that the SLP against the judgment of the Division Bench of the Karnataka High Court in Writ Appeal No. 1721/2006 (S-R) has been dismissed by the Supreme Court. That apart, Mr. Saurabh Prakash has placed before me the judgment of the Supreme Court reported as ***2014 (3) LAJ 513 (SC), State Bank of Patiala Vs. Pritam Singh Bedi***

and Ors. wherein a similar regulation had come up for interpretation before the Supreme Court. The Supreme Court, interpreting the Regulation 18, which contemplated that if broken period is more than 6 months, it shall be treated as one year, held, the employees in that case having completed more than 19 years, 6 months of service in the appellant bank, be treated to have completed 20 years of service and granted the benefit under Regulation 29 of the Regulations 1995, relating to pension on voluntary retirement. In the present case, Mr. Saurabh Prakash concedes to the fact that on the date when the petitioner was relieved on September 12, 2005 for his joining at Mumbai, he did complete 19 years and 6 months of service and was eligible for SVRS/VRS. On that date, the request of the petitioner for SVRS was pending before the respondent No. 1 and no departmental enquiry has been initiated.

22. Suffice to state, in the facts, more particularly the stand taken by the respondent No. 1, this Court is of the view that the respondent No. 1 should have accepted the VRS of the petitioner, rather than pursuing the charge sheet which ultimately entailed in the order of removal, whereby the petitioner had to forfeit the past service of 20 years for frivolous reasons when the petitioner had expressed himself for being relieved in 2004 and thereafter also and at least, on September 12, 2005 when the

petitioner was relieved from Delhi's office to join at Mumbai, and on which date, he had more than 19½ years of service. The charge sheet dated May 3, 2006 needs to be quashed in the peculiar facts of this case. I order accordingly.

23. The subsequent orders dated September 11, 2008 and February 26, 2009 which have been passed against the petitioner also needs to be quashed and set aside. It is ordered accordingly. The petitioner shall be considered as having voluntary retired with effect from September 12, 2005 and he would be entitled to the consequential benefits of voluntary retirement with effect from that date, which shall be paid to him as expeditiously as possible, but not later than three months from today.

24. With the above directions, the petitions stand disposed of.

25. No costs.

(V.KAMESWAR RAO)
JUDGE

JULY 29, 2015
akb