



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: July 05, 2023*

+ W.P.(C) 7917/2020 & CM APPL. 25903/2020

UNION OF INDIA

..... Petitioner

Through: Mr. Jaswinder Singh and Ms. Shipra Shukla, Advs.

versus

ARUN MISHRA & ANR.

..... Respondents

Through: Mr. Krishnan Venugopal, Sr. Adv.
with Mr. Siddhartha and Mr. Avinash Mathew, Advs. for R-1
Ms. Madhumita Bhattacharjee, Adv.
for R-2/State of West Bengal

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition by the Union of India / petitioner is to an order dated August 21, 2019 passed by the Central Administrative Tribunal (the 'Tribunal', for short) in O.A. 3163/2018 whereby the Tribunal has allowed the original application filed by the respondent No.1 herein by holding that the application for voluntary retirement submitted by respondent No.1 shall be deemed to have been accepted on expiry of 90 days from the date of application and he shall be entitled to all the benefits under the relevant provisions of law within a period of three



months from the date of receipt of a certified copy of the Tribunal's order.

2. The facts as noted from the record are, the respondent No.1 is an IAS Officer of 1986 batch, West Bengal Cadre. In 2004, he went on central deputation and held various positions in the Government of India. The respondent No.1's central deputation came to an end on December 31, 2013. While on central deputation, the respondent No.1, received an Offer of Assignment in the International Civil Aviation Organization ('ICAO', for short) as the Regional Director for a period of four years. However, the cadre clearance for holding the said assignment for a period of four years was denied by the petitioner herein. In this regard, a communication dated January 21, 2014 was issued by the respondent No.2.

3. On January 31, 2014, the respondent No.1 made a request to respondent No.2 to permit him to take voluntary retirement w.e.f., March 31, 2014 under Rule 16(2) of the All India Service (Death-cum-Retirement Benefits) Rules, 1958 (the 'Rules', for short). As the aforesaid Rule stipulated a notice period of three months, the respondent No.1 made a request for relaxing the aforesaid notice period. However, no steps were taken by the respondent No.2 and in the meantime in the year 2017, the Rule 16(2) of the Rules was amended.

4. On March 13, 2018, the respondent No.2 expressed its inability to accept the application for voluntary retirement submitted by the respondent No.1. The same was communicated to



the respondent No.1 by the petitioner through order dated July 16, 2018 and the same became the subject matter of challenge before the Tribunal. The case of the respondent No.1 before the Tribunal was that the application for voluntary retirement ought to have been accepted by the petitioner / respondent No.2, particularly when there is nothing adverse against him in the entire service record. It was his case that on fulfillment of the conditions stipulated under the Rules, his request for voluntary retirement became acceptable without any hindrance. It was also his case that even the discretion, if at all, of the respondent No.2 could have been exercised only in the context of relaxation of the notice period and once no step in that direction was taken till the expiry of normal notice period, the right had accrued to him to go on voluntary retirement.

5. The Tribunal by relying upon the judgments of the Supreme Court in the cases of ***State of Haryana and others v. S.K. Singhal, (1999) (4) SCC 293*** and ***Mahendrabhai Bhavanishankar Mehta v. State of Gujarat, 2011 SCC Online Guj 1908***, allowed the O.A., by holding in paragraphs 8 to 12, as under:-

“8. It is not in dispute that the notice issued by the applicant was of less than three months period. Therefore, he made a request for relaxation. The 2nd respondent did not take any decision on the request made by the applicant, before expiry of the three months notice period. Since no steps were taken by the 2nd respondent before expiry of the period of three months, nor the applicant had withdrawn his request



for VRS, it emerges that a notice of three months existed. It is also necessary to take note of the fact that Rule 16 (2B) (2C) and (2D) were added through notification dated 27.02.2017. They read as under:-

“16(2B) (a) The notice of voluntary retirement given in writing by the member of the service under sub-rule (2) and (2A) may be withdrawn by the member of service.

(b) Request for withdrawal of notice of voluntary retirement shall be submitted to the Competent Authority within the period specified in the said notice.

(2C) Where a notice of voluntary retirement is given by a member of service under sub-rule (2) and the competent authority does not issue any order before the expiry of the period specified in the said notice, the voluntary retirement shall become effective from the date of expiry of the said period.

Provided that, where no order is issued by the competent authority, then after the expiry of the period specified in the notice, the Central Government may issue orders.

(2D) For the purpose of this rule the expression ‘competent authority’ shall mean the authority which is empowered to accept notice of voluntary retirement under sub-rules (2) and (2A).”

An element of deemed acceptance is brought into existence. In a way, what was implied was made explicit. It is only after the amended rule came into force, the impugned orders were passed. The one passed by the 2nd respondent on 13.03.2018, reads as under:-

“No.784-HR/O/IAS/7P-113/2011 Dated, Howrah, the 13th March, 2018



From : Prabhat Kumar Mishra, IAS
Principal Secretary to the Government of West Bengal

To: The Secretary
Department of Personnel and Training,
Government of India,
North Block,
New Delhi.

Subject: Representation of Shri Arun Mishra, IAS (WB:1986) for
VR-regarding.

Ref: No.2412/03/2016-AIS-II dated 26.02.2018 of DoP&T

Sir,

With reference to above matter, this is to inform that the representation of Shri Arun Mishra, IAS (WB:1986) for Voluntary Retirement is not acceptable to the State Government.

This is issued with approval of the Competent Authority.

Yours faithfully,

Sd/

(P. K. Mishra)
Principal Secretary"

That in turn was communicated by the 1st respondent to the applicant through a letter dated 16.07.2018. It reads as under:-

"To

Shri Arun Mishra, IAS (WB: 1986)
C/o-Mrs. K. Jha, 5/20, Sarva Priya Vihar,
New Delhi 110 016.

Subject : Request for Voluntary Retirement of Shri Arun Mishra, IAS
(WB:1986)-reg.

Sir,

I am directed to refer to your e-mail dated 06/07/2018 addressed to Secretary, DoPT on the above mentioned subject requesting to be informed of the decision taken by Competent Authority in this regard.

2. Government of West Bengal vide their Letter No.784-HR/O/IAS/7P-113/2011 dated 13/3/2018 have communicated to this Department that the proposal of Voluntary Retirement of Shri Arun Mishra, IAS (WB:1986) is not acceptable.

3. As such, no further action in the matter is called for, on part of this Department.

Yours faithfully,

Sd/

(Jyotsna Gupta)
Under Secretary to Govt. of India"

Even under Rule 16 (2) (A), before the amendment came into force, the power was conferred on the State Government to reject the request in the context of relaxation of the notice period. Such power could have been exercised before the expiry of 90 days from the date of application. Once the period of 90 days expired from the date of application, not only the



request for relaxation becomes redundant but also the State Government stands stripped off its power to reject the same. It is also necessary to take note of the fact that the rule never provided for the acceptance of the application for VRS. It is almost self operative. As observed earlier, the acceptance, if at all, was only of the request for relaxation and not the request for VRS.

9. Obviously with a view to remove uncertainty or the possibility of the rule being incorporated as the one that needed acceptance of the State Government, the amendment has drawn curtains to it by incorporating sub rule 2 (C) of Rule 16 of the Rules.

10. Much before the amendment was carried out, the right of an IAS Officer to seek VRS and the consequences that flow from such a right, was dealt with by the Hon'ble Supreme Court in **State of Haryana vs. S. K. Singhal** (1999) (4) SCC 293. The Hon'ble Supreme Court took note of various judgments rendered on the subject and observed as under:

“9. The employment of Government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Govt. to compulsorily retire and employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of (say) three months that he would voluntarily retire on the expiry of the said period of three months. Some Rules are couched in language which results in an automatic retirement of the employee upon the



expiry of the period specified in the employee's notice. On the other hand, certain Rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The

relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in

service. Cases like Dinesh Chandra Sangma vs. State of Assam (1977) 4 SCC 441: B. J. Shelat v. State of Gujarat (1978) 2 SCC 202 and Union of India vs. Sayed Muzaffar Mir (1995) Supp. (1) SCC 76 belong to the former category where it is held that upon expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand H. P. Horticultural Produce Marketing & Processing Corpn. Ltd. v. Suman Behari Sharma (1996) 4 SCC 584 belongs to the second category where the Bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail."

"13. Thus from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in Rules to withhold permission in certain contingencies the voluntary



retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat's case and as in Sayed Muzaffar Mir's case, the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as Stated in B.J.Shelat's case and in Sayed Muzaffar Mir's case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission."

11. In Mahendrabhai Bhavanishankar Mehta vs. State of Gujarat 2011 SCC Online Guj 1908, the Hon''ble Gujarat High Court discussed the issue at length and held that there is no necessity of acceptance, having regard to the text of the rule. Even where the rule provides for acceptance of the request, the judicial pronouncements are to the effect that if the concerned authority fails to communicate its decision before the expiry of the notice period, the request shall be deemed to have been accepted. The uncertainty in this behalf stood removed with the inclusion of sub rule (2) (C) under Rule 16 of the Rules. Though quite large numbers of cases were cited by the learned



counsel for the applicant, we do not feel the necessity of referring them in detail.

12. The OA is accordingly allowed and the application for voluntary retirement submitted by the applicant shall be deemed to have been accepted on expiry of 90 days from the date of application, and the applicant shall be extended all the benefits under the relevant provisions of law within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.”

6. Mr. Jaswinder Singh, Advocate appearing for the petitioner / Union of India would contest the impugned order passed by the Tribunal by stating that the Tribunal has clearly overlooked the conduct of the respondent No.1 while allowing the original application. According to him, respondent No.1, having completed the central deputation and also after being granted the two months end-of-tenure leave up to February 28, 2014 by the Ministry of Civil Aviation, he was required to report to the respondent No. 2 by March 01, 2014, which he did not do. In fact, the respondent No.1, on his own volition, had on December 05, 2013 i.e., before expiry of the central deputation, accepted the Offer of Appointment as Regional Director, ICAO, effecting from January 01, 2014, without taking permission from the petitioner and the respondent No.2. It is his submission that this conduct of respondent No.1 is clearly a misconduct for which he could have been proceeded under the All India Services (Discipline and Appeal) Rules, 1969. That apart, it is also his submission that the Tribunal has failed to appreciate that as per Rule 16(2) of the



Rules, the respondent No.2 was competent to decide both the aspect i.e., the request for voluntary retirement as well as waiver of notice period.

7. It is his case that in the facts of this case, more so, keeping in view the conduct of respondent No.1, if the notice for voluntary retirement has not been accepted, the same cannot be faulted. He would rely upon the judgment of the Supreme Court in ***H. P. Horticultural Produce Marketing & Processing Corporation Ltd. v. Suman Behari Sharma (1996) 4 SCC 584***. He also states, that Rule 16 (2)(C) having been inserted in the year 2017, it is clear that before the amendment, the acceptance of the request of voluntary retirement was a pre-requisite before the employee can be treated as retiree. It is for this reason that the petitioner had in its communication dated August 25, 2018 to the State Government has stated that as the request for VRS has not been accepted, the petitioner be informed whether the State Government has treated the absence of the respondent No.1 as unauthorized. He states that the impugned Judgment of the Tribunal needs to be set aside.

8. Ms. Madhumita Bhattacharjee would also contest the judgment of the Tribunal on behalf of respondent No.2 by stating that vide letter dated January 21, 2014, it was expressed by the respondent No.2 (the, 'State Government'), its inability to grant Cadre clearance for the proposed post. Therefore, the respondent No.1 was supposed to join the respondent No.2 / parent department first, i.e., just after the tenure leave has ended. The respondent No.1 not joining the respondent No.2, more particularly, when the



Cadre clearance was not given, he could not have joined the place of posting under ICAO. Moreover, he could not have tendered the request for voluntary retirement.

9. It is her submission that it is a settled law that grant of voluntary retirement is a complete discretion to be exercised by the employer, keeping in view the exigencies of circumstances. She further submitted that, in fact, the respondent No.1 had tried to mislead the Tribunal by clubbing two issues i.e., the respondent No.1 not joining the respondent No.2, after the tenure-end leave and rejection of respondent No.1's application for voluntary retirement, both of which stand on completely different parameters.

10. She further submits that the voluntary retirement can be sought within the four corners of the Rules. In terms of the Rules, the State Government has every right to reject the request for voluntary retirement as discretion lies with the employer. She has relied upon the following judgments in support of her submissions:-

i. *Union of India v. Sayed Muzaffar Mir, 1995 Supp (1) SCC 76;*

ii. *Mohan Singh and Ors v. International Airport Authority of India and Ors., (1997) 9 SCC 132;*

iii. *H.P Horticultural Produce Marketing & Processing Corporation Ltd (supra);*



iv. *Reserve Bank of India v. Cecil Dennis Solomon, (2004) 9 SCC 461*

11. On the other hand, Mr. Krishnan Venugopal, learned Senior Counsel appearing for the respondent No.1 would justify the order of the Tribunal by stating that while on central deputation, the respondent No.1 served on several important posts, such as Joint Secretary of Civil Aviation, Director General of Civil Aviation and also he was India's representative at ICAO, which is a specialised agency under the United Nations.

12. He submitted that on November 22, 2013, ICAO offered the respondent No.1, an appointment as Regional Director, Asia Pacific office with headquarters in Bangkok for a period of four years effective from January 01, 2014. Accordingly, on December 17, 2013, the respondent No.1 requested the Secretary, Ministry of Civil Aviation, for referring his case for foreign Assignment for a period of four years.

13. Subsequently, on December 26, 2013, vigilance report regarding disciplinary issues against the respondent No. 1 came out and it was confirmed that no cases / investigations are pending against him. Again on November 27, 2013, the Ministry of Civil Aviation forwarded the request of the respondent No.1 for deputation to ICAO, along with recommendations and the requisite vigilance clearance to the Department of Personnel & Training ('DoP&T', for short). At the same time a request was also sent to the respondent No.2, for State Cadre clearance. The Ministry of Civil Aviation, in the letter, recommended that DoP&T and the



respondent No.2 to consider the request of the respondent No. 1, in accordance with the Rules.

14. That on January 31, 2014, in the absence of any response from the respondent No.2 or the DoP&T regarding his request to go on international deputation, the respondent No. 1, who had already attained the age of 52 years, decided to put in his notice for voluntary retirement from the Government Service.

15. According to Mr. Venugopal, it is an admitted position that the respondent No.1, on completion of the central deputation on December 31, 2013, was granted two months tenure end leave. However, he did not join his cadre / respondent No. 2, but made a representation dated January 31, 2014, to respondent No.2, with a request for voluntary retirement w.e.f. March 31, 2014 under Rule 16(2) of the Rules, as he was interested in joining ICAO.

16. It is his submission that since the Rules stipulated a notice period of three months, the respondent No. 1 made a request for relaxation as contemplated under the second proviso to Rule 16(2). He fairly states that on February 03, 2014, the respondent No.1 joined ICAO as Regional Director of Asia Pacific, Bangkok. According to him, no order of rejection of the voluntary retirement application was passed by the respondent No. 2 until March 13, 2018, when inability was expressed to accept the request of the respondent No. 1. The afore-said inability was conveyed to the respondent No. 1 by the petitioner vide order dated July 16, 2018.

17. Being aggrieved by the orders dated March 13, 2018 and July 16, 2018, the underlying OA No. 3163/2018 was filed before



the Tribunal on August 21, 2018. It is his submission that there is a deemed acceptance of the request for voluntary retirement after the expiry of the notice period. There is no question of rejection or acceptance of respondent No. 1's voluntary retirement application under Rule 16(2) or 16(2)(A) of the Rules after the expiry of the three-month notice period. In this regard, he has relied upon the judgment of the Supreme Court in the *Sayed Muzaffar Mir (supra)*. He has also relied upon the judgment in the case of *Tek Chand v. Dile Ram, (2001) 3 SCC 290*. Further, he relied upon the judgment in the case of *Dinesh Chandra Sangma v. State of Assam, (1977) 4 SCC 441* and *S.K. Singhal (supra)*.

18. It is his submission that once, the fact that the request under the second proviso to sub-rule (2) of Rule 16 is made to relax the notice period of three months, the decision of the respondent No.2, even if it was in the negative, ought to have been conveyed to the respondent No. 1 with reasonable alacrity and certainly within the outer limit of three months. In support of his submission, he has relied upon the judgment of *Mahaveer Khariwal v. Indian Bank & Anr., LPA No. 246/2007* decided on *February 02, 2009*.

19. That apart, it is his submission that in the amended Rules (2017), made it explicit by the insertion of sub-rules, (2C) and (2D) into Rule 16 that if the competent authority does not issue any order before the expiry of the period specified in the notice, the voluntary retirement shall become effective from the date of expiry of the said period. In that regard, there is no order issued by the



respondent No.2 before the expiry of the notice period and in fact the same was rejected only in the year 2018 i.e., after more than four years, which make it explicit that such acceptance is not a valid acceptance in the eyes of law in view of the Rules and as such has no effect. According to Mr. Venugopal, it is precisely for that reason, the Tribunal has held that the respondent No.1's request for voluntary retirement deemed to have been accepted.

20. In the facts of this case, Mr. Venugopal states that the conclusion drawn by the Tribunal need to be upheld and made a prayer that the present petition should be dismissed.

ANALYSIS

21. Having heard the counsel for the parties and perused the record, the only issue which arises for consideration is, whether the Tribunal is justified in allowing the O.A. filed by the respondent No.1. The answer to the same has to be in the affirmative inasmuch as the request for voluntary retirement of the respondent No.1 was not rejected within three months of the notice period. The Rule 16(2) which we reproduce as under, clearly stipulates that the discretion lies with the government servant to seek voluntary retirement:-

"16. Superannuation gratuity or pension.-

16(2) A member of the Service may, after giving at least three months' previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice: Provided that no member of the Service under



suspension shall retire from service except with the specific approval of the Central Government. Provided further that the State Government concerned on a request made by the member of the service may, if satisfied and for reasons to be recorded in writing, relax the period of notice.

16 (2) (A) A member of the service may, after giving three months" previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice:

Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the Service could have retired from service under sub-rule (2):

Provided further that a member of the Service, who is on deputation to a cooperation or company wholly or substantially owned or controlled by the Government or to a body controlled or financed by the Government, shall not be eligible to retire from the service under this rule for getting himself permanently absorbed in such corporation, company or body.

Provided also that a member of the Service borne on the Cadres of Assam-Meghalaya, Manipur-Tripura, Nagaland and Sikkim may retire from service on the date on which he/she completes 15 years of service."

22. There is nothing in the afore-said Rule which pre-supposes the acceptance of request by the employer i.e., the petitioner/respondent No.2. The plea of Mr. Jaswinder Singh and also of Ms. Bhattacharjee on the conduct of the respondent No.1, i.e., inasmuch as the respondent No.1 during his employment under



the Government of India/State Government has joined the ICAO which amounts to misconduct is not appealing. In this respect, we may state here that on receipt of the appointment letter from the ICAO, the respondent No.1 had approached the Ministry of Civil Aviation, which in turn informed DoP&T and the respondent No.2. It is only on January 21, 2014 that the respondent No.2 denied Cadre clearance to the respondent No.1. It appears, this made the respondent No.1 to submit his application for voluntary retirement on January 31, 2014.

23. No doubt, the respondent No.1 without waiting for a response from the respondent No.2, had in fact joined the ICAO on February 03, 2014, but the fact remains that the respondent No.2 had not passed any order rejecting the request of the voluntary retirement within the notice period of three months. The Rule 16(2) contemplates the discretion of the employee to seek voluntary retirement. Moreover, the said Rule does not contemplate that such a request need to be accepted by the petitioner / respondent No.2.

24. Mr. Venugopal is justified in relying upon the judgments in the case of *Sayed Muzaffar Mir (supra)* and *Dinesh Chandra Sangma (supra)*, wherein the Supreme Court on the interpretation of the rules concerned therein, was of the view, where the Government servants seeks premature retirement, the same does not require any acceptance and comes into effect only on the completion of the notice period. The Rule, which forms the subject matter in this petition is *pari materia* with Rule 1802(b) of the Indian Railway Establishment Code and Rule 56(c) of the



Fundamental Rules, which were in consideration in *Sayed Muzaffar Mir (supra)* and *Dinesh Chandra Sangma (supra)*, respectively.

25. That apart, in *S.K. Singhal (supra)*, on which reliance has been placed by the Tribunal, the Supreme Court, has in paragraphs 10 to 13 held as under:-

“10. In Dinesh Chandra Sangma case this Court was dealing with FR 56(c) as it stood then. The Court pointed out that FR 56(b) and FR 56(c) referred to rights respectively conferred on the State and on the employee. FR 56(b) conferred a right on the Government to compulsorily retire an employee in public interest by giving him notice of not less than 3 months in writing or 3 months' pay and allowances in lieu of such notice, after he attained 50 years of age or had completed 25 years of service, whichever was earlier. Correspondingly, FR 56(c) stated as follows:

“56.(c) Any government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.” It was held by the three-Judge Bench that it was clear that the effect of FR 56(c) was statutory unlike in the case of contracts of employment requiring an express order of acceptance of the retirement notice. It was stated: (SCC p. 445, para 8)

“There is no question of acceptance of the request for voluntary retirement by the Government when the government servant exercises his right under FR 56(c).”

It was again stated: (SCC p. 447, para 13)

“13. FR 56 is one of the statutory rules which binds the Government as well as the government



servant. The condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a government servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to Rule 119."

(emphasis supplied)

and as follows: (SCC pp. 447-48, para 16)

"16. The appellant has voluntarily retired by three months' notice, not in accordance with an express or implied term of his contract of employment, but in pursuance of a statutory rule."

11. Another three-Judge Bench in B.J. Shelat case was dealing with Rule 161(2)(i) of the Bombay Civil Services Rules which contained a proviso similar to proviso (b) of FR 56(k) to the effect that "it shall be open to the appointing authority to withhold permission to retire to a government servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause". It was noticed that no suspension was in force and no departmental proceedings were pending but, on facts, it could be said that a departmental proceeding was under contemplation. However, on a reading of the rule and the proviso, it was held that inasmuch as no order refusing permission was passed or communicated within the notice period, the voluntary retirement took effect automatically. The Court observed that this result followed even though the right to retire conferred on the employee was not as absolute as in Dinesh Chandra Sangma case [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] but was a qualified right. The Court held as follows: (SCC pp. 205-06, para 7)



“A right is conferred on the government servant under Rule 161(2)(ii) to retire by giving not less than three months' notice on his attaining the prescribed age. Such a right is subject to the proviso which is incorporated to the sub-section which reads as follows:

* * *

But for the proviso, a government servant would be at liberty to retire by giving not less than three months' notice in writing to the appointing authority on attaining the prescribed age. This position has been made clear by this Court in Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] where the Court was considering the effect of the (Assam) Fundamental Rule 56(c)....”

The Court further stated: (SCC p. 206, para 7)

“But for the proviso to Rule 161(2)(ii) the decision of this Court in the case cited above would be applicable and the right would have been absolute. But the proviso has restricted the right conferred on the government servant. ... Thus the permission to retire can be withheld by the appointing authority either when the government servant is under suspension or against whom departmental proceedings are pending or contemplated. ... No departmental proceeding was pending but on the facts one cannot say that a proceeding was not under contemplation.”

(emphasis supplied)

Having stated that the right conferred on the government servant was not absolute but conditional and that one of the conditions, namely, that departmental proceedings were contemplated was in existence which could have been taken advantage of by the Government, the Court held as follows: (SCC p. 207, para 8)



“In the case before us it is incumbent on the appointing authority to withhold permission to retire on one of the conditions mentioned in the proviso. We are of the opinion that the proviso contemplates a positive action by the appointing authority.”

(emphasis supplied)

and it was finally declared: (SCC p. 207, para 8)

“For the proviso to become operative it is necessary that the Government should not only take a decision but communicate it to the government servant. ... admittedly the order of suspension was not communicated before the date of superannuation.”

(emphasis supplied)

And explaining the identical proviso in proviso (b) to FR 56(k), this Court again reiterated that: (SCC p. 208, para 10)

“[I]t is incumbent on the Government to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso.”

(emphasis supplied)

It was further made clear (at SCC p. 208, para 11) that the appointing authority

“has no jurisdiction to take disciplinary proceedings against a government servant who had effectively retired”.

It was held that: (SCC p. 209, para 11)

“disciplinary action cannot be taken after the date of (his) retirement.”

(emphasis supplied)

Therefore, it was necessary to communicate the decision of refusal of permission before the expiry of the notice period.

12. The third case which falls in the first category is the one in Union of India v. Sayed Muzaffar Mir decided by a Bench of two learned Judges. In this case, the abovesaid two rulings were followed. The



case arose under Rule 1802(b)(1) of the Railway Establishment Code. In that case, the respondent had given a notice on 22-7-1985 of 3 months to the Railways to retire from service as visualised by Rule 1802(b). The period expired on 21-10-1985 and the order of removal was passed on 4-11-1985. The proviso to the rule permitted withholding of permission to retire in case the employee was under suspension. As a fact, the employee was under suspension at the relevant time and this could have been taken advantage of by the Government. In fact, Rule 1801(d) which started with a non obstante clause stated that the competent authority might require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. It was held that even though the officer was under suspension and the request for retirement could be denied, still an order withholding such permission or requiring him to continue, was required to be passed. It was “admitted” that no such order was passed. Therefore, it was held that the employer had not exercised a right given to it under Rule 1801(d). The Court further observed that in Dinesh Chandra Sangma case it was held that “the same does not require acceptance and comes into effect on the completion of the notice period” and that that decision was followed in B.J. Shelat case. The Court finally held: (SCC p. 77, para 6)

“6. The period of notice in the present case having expired on 21-10-1985, and the first order of removal having been passed on 4-11-1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of the law.”



13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in *Dinesh Chandra Sangma* case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in *B.J. Shelat* case and as in *Sayed Muzaffar Mir* case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in *B.J. Shelat* case and in *Sayed Muzaffar Mir* case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”

26. Insofar as the reliance placed by the learned counsel for the petitioner and the respondent No.2 in *H. P. Horticultural Produce Marketing & Processing Corporation Ltd.* (*supra*) is concerned, the Supreme Court while interpreting the rule, concerned therein, has clearly held that rule contemplates a scenario wherein the request for voluntary retirement was required to be permitted by the employer. It is not such a case under the Rule governing the



service conditions of the respondent No.1 in the case in hand. Thus, the said judgment is clearly distinguishable.

27. During the course of submissions, Mr. Jaswinder Singh has also drawn our attention to the amended Rule i.e., Rule 16(2)(C) to contend that the Rule 16(2)(C) of the Rules has been inserted vide notification dated February 27, 2017 and the same cannot be applied retrospectively. Hence, the request of respondent No.1 for issuance of an order of voluntary retirement by Central Government in pursuance of his voluntary retirement notice dated January 31, 2014 was devoid of any basis. On this, the submission of Mr. Venugopal is that *de hors* the insertion of Rule 16(2)(C), the Rule 16(2) itself contemplate that a member of service can retire from service by giving at least three months previous notice in writing and it does not contemplate an acceptance by the employer is appealing. In fact, the judgment of the Supreme Court as relied upon by the Tribunal in *S.K. Singhal (supra)* which is of the year 1999, the Tribunal held that much before the amendment was carried out the right of an IAS Officer to seek VRS and the consequence which flow from such a right was dealt with in the said judgment. We agree with such a conclusion. The insertion of Rule 16(2)(C) has no bearing on Rule 16(2). The Rule 16(2)(C) only stipulates/clarify that if the competent authority does not issue any order before the expiry of the notice period, the voluntary retirement shall become *effective from the date of expiry of the said period*. The Rule 16(2)(C) does not state that voluntary retirement would become effective only on acceptance by the employer.



28. In view of our discussion above, we are of the view that the petition is devoid of merit and as such liable to be dismissed. It is ordered accordingly. There shall be no order as to costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 05, 2023/ds

