

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1018 OF 2024

Abdur Rahman	}	
(Son of Aas Mohammad Mian)	}	
Date of Birth: 08.01.1973	}	
(age 50 years), working as	}	
Spl. Inspector General of Police	}	
(State Human Rights Commission),	}	
Maharashtra State, Mumbai	}	
(Group "A" post) in the office of	}	
Maharashtra State Human Rights	}	
Commission, 9-Hajarimal Somani	}	
Marg, Opp. Chhatrapati Shivaji	}	
Maharaj Terminus (CSMT) Railway	}	
Station, Mumbai – 40001 and	}	
Residing at : A-3/503, 5 th Floor,	}	
Bramha Emerald Country,	}	
Kausar Baug, Off NIBM Road,	}	
Kondhwa, Pune – 411048,	}	
District-Pune, State of Maharashtra	}	 Petitioner

Versus

1. Union of India,	}	
Through: The Secretary,	}	
Ministry of Home Affairs,	}	
Government of India,	}	
North Block, New Delhi – 110001.	}	
 2. The Chief Secretary,	 }	
Government of Maharashtra,	}	
Mantralaya, Mumbai – 400032	}	
 3. The Addl. Chief Secretary,	 }	
Home Department,	}	
Government of Maharashtra,	}	
Mantralaya, Mumbai – 400032	}	 Respondents

Mr. Arshad Shaikh, Senior Advocate a/w
Devansh Malhotra, Rajendra Jain, Pranil
Lohigade i/by Jasim G. Shaikh for petitioner.

Mr. R. R. Shetty for respondent no.1 – UoI.

Mr. P. P. Kakade, Government Pleader with
Mr. O. A. Chandurkar, Addl. Govt. Pleader
and Mrs. G. R. Raghuwanshi, AGP for
respondent nos.2 and 3 – State.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

Reserved on : - 7TH MAY 2024
Pronounced on : - 23RD JULY 2024

JUDGEMENT: (Per Chief Justice)

(A) CHALLENGE:

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner, who is a member of Indian Police Service (IPS) borne on Maharashtra Cadre, challenging the judgment and order dated 7th December 2023 passed by Mumbai Bench of Central Administrative Tribunal (hereinafter referred to as "Tribunal"), whereby Original Application No. 758 of 2019 filed by him has been dismissed and his prayer for quashing the decision dated 25th October 2019 rejecting his prayer for voluntary retirement has not been acceded to.

(B) FACTS:

2. Certain facts, which are necessary for proper adjudication of the issue involved in this petition, need to be noted. The petitioner is a 1997 batch IPS officer. By moving an application on 20th March 2018 to the State Government, he sought voluntary retirement from service, however, the said prayer was rejected by the Central Government by means of the order dated 1st June 2018 for the reason that the petitioner was not found clear from vigilance angle and disciplinary proceedings were pending/contemplated against him. Prior to the application dated 20th March 2018, the petitioner was denied his promotion, which led him to file Original Application No. 743 of 2017 before the Tribunal, which was allowed by means of order dated 18th December 2018 directing the respondents therein to hold review Departmental Promotion Committee and consider the petitioner for promotion in the rank of Special Inspector General of Police with effect from the date his immediate junior was promoted.

3. In respect of certain charges, some departmental proceedings were also pending against the petitioner, however, the said departmental proceedings culminated in the order of exoneration passed on 1st January 2019 and thereafter, the

petitioner again moved an application dated 1st August 2019 to the State Government seeking voluntary retirement. On the said application, the State Government sent the proposal for voluntary retirement of the petitioner to the Government of India, by means of letter dated 16th October 2019 mentioning therein that the three disciplinary proceedings are contemplated against the petitioner, however, further observing therein that the charge-sheets in respect of the said contemplated disciplinary proceedings were not issued and that it seems that no major penalty may be imposed on the officer in all the three contemplated disciplinary actions.

4. The Central Government, however, considered the prayer of the petitioner and by means of the letter dated 25th October 2019, communicated to the Chief Secretary of the State Government that the competent authority in the Central Government has not acceded to the request of voluntary retirement of the petitioner giving the reason that the petitioner was not clear from vigilance angle and disciplinary proceedings were pending/under consideration against him. It is this decision of the Central Government contained in the communication dated 25th October 2019 which was communicated to the petitioner by the State Government by its letter dated 30th

October 2019, that became the subject matter of challenge in Original Application No. 758 of 2019, which was dismissed by the Tribunal by means of the impugned judgment and order dated 7th December 2023. In the instant petition, challenge has been laid to the said judgment and order dated 7th December 2019 passed by the Tribunal.

(C) SUBMISSIONS OF THE RESPECTIVE PARTIES

(C-1) CONTENTIONS OF THE PETITIONER:

5. Impeaching the impugned judgment and order passed by the Tribunal, Mr. Arshad Shaikh, learned senior advocate representing the petitioner has argued that the Tribunal, while dismissing the Original Application filed by the petitioner, has not taken into consideration the provisions of Rule 16(2A) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as "1958 Rules) in its correct perspective and as such, has erred in law. He has further argued that the Tribunal has also failed to consider the fact that the State Government had recommended to the Central Government to accept the prayer made by the petitioner seeking voluntary retirement.

6. Drawing our attention to the first proviso appended to Rule 16(2A) of the 1958 Rules, Mr. Shaikh has argued that the said

Rule clearly states that notice of retirement given by the petitioner was only required to be accepted by the Central Government and that "acceptance" and "approval" are two distinct terms connoting different meanings. According to Mr. Shaikh, if the statutory Rule requires acceptance, all that was needed to be done by the Central Government was to accept the proposal submitted to it by the State Government on the application of the petitioner without any thorough inquiry. His submission further is that in case the requirement of statutory Rule was "approval", then, of course, it would have been appropriate for the Central Government to have considered the proposal and applied its mind whether or not to approve such proposal. He has stated that since the requirement under the first proviso appended to Rule 16(2A) is "acceptance" only, hence, unless anything contrary to the proposal sent by the State Government was found, in ordinary course, the proposal ought to be accepted granting the prayer of voluntary retirement made by the petitioner. In his submission, he has further argued that the phrase "acceptance" occurring in the first proviso appended to Rule 16(2A) of the 1958 Rules would mean that the Central Government was expected to issue merely a ministerial order accepting the proposal sent to it by

the State Government. Mr. Shaikh has, thus, argued that the difference between “acceptance” and “approval” has completely been lost sight of by the authorities and since in terms of Rule 16(2A) it is only the “acceptance” which was required, any other decision taken by the Central Government in the instant case beyond the proposal sent to it by the State Government, is not sustainable.

7. Mr. Shaikh has also drawn our attention to the guidelines issued by the Government of India vide letter dated 16th October 1980 issued by the Department of Personnel and Administrative Reforms (DP & AR), wherein it has been provided that in cases where disciplinary proceedings are pending or contemplated for imposition of a major penalty and the disciplinary authority, having regard to the facts and circumstances of the case, forms an opinion that imposition of major penalty of removal or dismissal from service would be warranted, the notice of voluntary retirement given by the officer concerned may not ordinarily be accepted. In the light of the said provision contained in the guidelines embodied in the letter dated 16th October 1980, it has been argued on behalf of the petitioner that once the State Government, in its proposal contained in the letter dated 16th October 2019, clearly opined

that the disciplinary proceedings against the petitioner are only contemplated and that it seemed that no major penalty will be imposed on the petitioner in all the three cases, in terms of the guidelines contained in the letter of the Government of India dated 16th October 1980, there was no reason for the Government of India not to have accepted the prayer for voluntary retirement.

8. It is the further submission of Mr. Shaikh that disciplinary authority in respect of the petitioner is the State Government in terms of the provisions contained in the All India Services (Discipline and Appeal) Rules 1969 (hereinafter referred to as "1969 Rules") and hence, the opinion as to whether the disciplinary matters which are contemplated against a member of Indian Police Service would result either of the major penalties of dismissal or removal from service, has to be formed by the State Government and not by the Central Government. His submission further is that in terms of the guidelines contained in the letter dated 16th October 1980 of the Central Government, once the opinion that disciplinary matter in respect of which proceedings were contemplated against the petitioner would not entail the penalty either of dismissal or removal from service, it was only a ministerial job which needed to be

performed by the Central Government accepting the prayer of the petitioner. According to Mr. Shaikh, the competent authority, i.e., the disciplinary authority, for the purposes of guidelines contained in the letter of the Government of India dated 16th October 1980, is the State Government, which, in its recommendation dated 16th October 2019, had clearly expressed its opinion that the inquiries contemplated against the petitioner would not result in either of the major penalties and hence, the decision of the Central Government not to accept the prayer of the petitioner runs contrary to the said guidelines and accordingly, it is not tenable.

9. Mr. Shaikh has also drawn our attention to the three disciplinary matters and submitted that the charges/allegations on the basis of which these three inquiries were contemplated, do not constitute a misconduct grave enough to entail either of the major penalties and hence, it is his submission that the Central Government has not appropriately considered the provisions of Rule 16(2A) of the 1958 Rules read with the guidelines issued on 16th October 1980 by the Government of India while rejecting the prayer made by the petitioner for voluntary retirement.

10. Mr. Shaikh has cited various judgments, which shall be dealt with by the Court at an appropriate place in our discussion.

**(C-2) SUBMISSIONS ON BEHALF OF
THE UNION OF INDIA:**

11. The Union of India (respondent no. 1) has contested the petition by filing an affidavit in reply, wherein, the averments made in the writ petition have been denied. Mr. Shetty, learned counsel representing the Union of India has submitted that the State Government, while forwarding its proposal vide letter dated 16th October 2019, had clearly indicated that the disciplinary proceedings in respect of three issues were contemplated against the petitioner and accordingly, having considered the request of the petitioner in terms of the provisions contained in the 1958 Rules read with the Government of India guidelines, the prayer made by the petitioner has rightly not been acceded to and that there is no illegality in the said decision of the Government of India.

12. Mr. Shetty has also drawn our attention to the fact that the petitioner has been served with the charge-sheet dated 17th June 2020 by the State Government under Rule 8 of the 1969 Rules for major penalty proceedings and the said proceedings may culminate into imposition of major penalty. His further

submission is that the charge in the charge-sheet dated 17th June 2020 against the petitioner is that of plural marriage, which, if proved, may result in either of the major penalties and accordingly, it cannot be said that at the time when the prayer of the petitioner seeking voluntary retirement was considered, no inquiry was contemplated, which may result in imposition of either of the major penalties.

13. Mr. Shetty has also argued that under Rule 7(2) of the 1969 Rules, penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Indian Police Service except by an order of the Central Government and as such, the submission made on behalf of the petitioner is that the contemplated disciplinary proceeding will or will not culminate in either of the major penalties is an issue in respect of which it is the opinion of the Central Government which is material and not that of the State Government. Justifying the impugned judgment passed by the Tribunal, Mr. Shetty has urged that the writ petition be dismissed.

**(C-3) SUBMISSION ON BEHALF OF
THE STATE GOVERNMENT:**

14. An affidavit in reply has been filed by the State Government stating therein that it supports the impugned judgment and order dated 7th December 2023 passed by the

Tribunal. It has been stated on behalf of the State Government that the competent authority of the Central Government has rightly not acceded to the request of voluntary retirement made by the petitioner.

15. Further submission made on behalf of the State is that disciplinary proceedings were contemplated in three cases against the petitioner under the 1969 Rules at the relevant point of time when the request for voluntary retirement was under consideration. It is further stated on behalf of the State that the fact that disciplinary proceedings were contemplated against the petitioner in respect of three matters was duly communicated to the Central Government by means of the letter dated 16th October 2019 and thereafter, it has been decided to conduct disciplinary proceedings against the petitioner.

16. The affidavit filed by the State also discloses that there are departmental proceedings instituted against the petitioner and some are pending, which may result in either of the major penalties. Hence, in respect of the charge-sheet dated 17th June 2020, it has been stated that an inquiry officer has been appointed on 31st January 2024 and report of the inquiry officer is awaited. Similarly, as regards the charge-sheet dated 24th February 2022, the affidavit states that on 23rd February 2022,

an inquiry officer was appointed, where as well, report of the inquiry officer is awaited. The affidavit further states that in respect of certain alleged misconducts relating to a speech delivered in public during the book launch function of the book authored by the petitioner, namely, "*Denial and Deprivation*", the subject matter whereof is "*Indian Muslims after the Sachher Committee and Ranganath Mishra Commission Reports*", though initially the departmental inquiry was under Rule 10 of the 1969 Rules, however, the State has decided to convert the same into departmental inquiry under Rule 8 of the said Rules for major penalty and that a draft charge-sheet has been sought by the Home Department of the State Government from the Director General of Police, which has been received on 18th April 2024.

17. Thus, the submission on behalf of the State Government is that in view of the fact that since on three different charges departmental proceedings were contemplated against the petitioner at the relevant point of time, the decision of the Central Government not to accede to the prayer of the petitioner has rightly not been interfered with by the Tribunal and accordingly, the judgment of the Tribunal does not warrant any interference by this Court in the instant writ petition.

(D) ISSUES:

18. Having regard to the pleadings of the respective parties, which are available on record of this writ petition and also taking into consideration the competing submissions made by learned counsel representing the respective parties, the issues which emerge for our consideration and adjudication are as follows: -

- (a) As to whether under the first proviso appended to Rule 16(2A) of the 1958 Rules, the Central Government, while considering a request from a member of Indian Police Service, is required only to accept the proposal made to it by the State Government in a routine manner and such act of acceptance is only ministerial in nature or the Rules permit the Central Government to consider the entire material placed before it and take decision on such prayer after application of mind?
- (b) As to whether the Central Government in this case has acted beyond its power and authority vested in it under the Rules by not agreeing with the recommendation made by the State Government vide its letter dated 16th October 2019 where the State Government had opined that the disciplinary matters in respect of which inquiries were contemplated against the petitioner were not likely to culminate in award of either of the major penalties of dismissal or removal from service?
- (c) As to whether the allegations/charges on the basis of which three departmental proceedings were contemplated against the petitioner and presently are

pending against the petitioner, would, in case the allegations/charges are proved against him, warrant any of the major penalties of dismissal or removal from service?

(E) DISCUSSION AND ANALYSIS:

19. Taking up issues (a) and (b) together, we may quote Rule 16(2A) of the 1958 Rules, which reads as under: -

"16(2A) *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 corporation 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."

20. The Government of India, vide its letter dated 16th October 1980, has issued certain guidelines for acceptance of notices of voluntary retirement. The said guidelines are also quoted hereinbelow: -

GOVERNMENT OF INDIA DECISION UNDER RULE 16(2A)

1. Guidelines for acceptance of notice of voluntary retirement: - It has been decided to lay down the following guidelines for the acceptance of the notice of retirement under sub-rule(2A) of Rule 16 of the All India Service (Death-cum-retirement Benefits) Rules, 1958 for the information and guidance of the State Governments: -

(i) A notice of voluntary retirement given by a member of the service may be withdrawn by him, after it is accepted by the State Government, only with the approval of the State Government concerned, provided the request for such withdrawal is made before the expiry of the period of notice.

(ii) In cases where disciplinary proceedings are pending or contemplated against a member of the Service for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the major penalty of removal or dismissal for service would be warranted, the notice of voluntary retirement given by the officer concerned may not ordinarily be accepted.

(iii) In cases where prosecution is contemplated or may have been launched in a court of law against a member of the service, the notice of voluntary retirement given by him may not ordinarily be accepted.

(iv) The notice of voluntary retirement given a member of the Service, who is on study leave or who has but not completed a minimum service of 3 years on completion of study leave, may not ordinarily be accepted.

21. As per Rule 16(2A) of the 1958 Rules, a member of Indian Police Service may seek voluntary retirement on giving three months' previous notice to the State Government, however, such notice of voluntary retirement needs to be "accepted" by the Central Government. The phrase "acceptance" occurring in the first proviso to Rule 16(2A) of the 1958 Rules has to be interpreted keeping in view the role assigned to the Central Government in respect of control and supervision over the

members of Indian Police Service in terms of the 1958 Rules. The 1958 Rules have been framed by the Central Government in consultation with the State Governments in exercise of the powers conferred by section 3(1) of the All India Services Act 1951 (hereinafter referred to as "the Act of 1951"). Similarly, the 1969 Rules have also been framed by the Central Government in consultation with the State Governments under section 3(1) of the Act of 1951. Both sets of Rules are statutory in nature and are, thus, binding on all concerned. The 1969 Rules contain elaborate procedure relating to disciplinary matters in respect of the members of Indian Police Service.

22. To ascertain as to what is the role assigned to the Central Government in respect of control and supervision of the members of Indian Police Service, we may refer to another set of Rules known as Indian Police Service (Cadre) Rules 1954 (hereinafter referred to as "the 1954 Rules") framed under section 3(1) of the Act of 1951. Rule 3 of the 1954 Rules provides for constitution for each State or a group of States an Indian Police Service Cadre. In terms of Rule 5 of the 1954 Rules, allocation of officers to various cadres is to be made by the Central Government in consultation with the State Government or State Governments concerned. The Central

Government has been given authority under Rule 5(2) of the 1954 Rules to transfer a cadre officer from one cadre to another with the concurrence of the State Government concerned. Rule 6 of the 1954 Rules provides that a cadre officer may be deputed for service under the Central Government or another State Government or under a company/association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by any State Government in consultation with the State Government concerned.

23. We may also refer to the Indian Police Service (Recruitment) Rules 1954 (hereinafter referred to as "the Recruitment Rules"), which have been framed under section 3(1) of the Act of 1951, which provides for two methods of recruitment in Indian Police Service, (i) by competitive examination and (ii) by promotion of substantive members of State Police Service. Rule 6 of the Recruitment Rules in unambiguous terms provides that all appointments of Indian Police Service shall be made by the Central Government and that no such appointment shall be made except after recruitment by one of the methods prescribed therefor. Reference may also be had to Regulation 13 of the Indian Police

Service (Appointment by Competitive Examination) Regulations 1955 (hereinafter referred to as "the 1955 Regulations"), according to which, inclusion of a candidate's name in the list for recruitment prepared by Union Public Service Commission (UPSC) does not confer any right to appointment unless the Central Government is satisfied, after inquiry, that the candidate is suitable in all respects for appointment to the Indian Police Service. Thus, so far as direct recruits to Indian Police Service are concerned, Rule 6 of the Recruitment Rules read with Regulation 13 of the 1955 Regulations clearly provides that it is the Central Government which makes the appointment to the Indian Police Service and accordingly, so far as the final appointment of a direct recruit to Indian Police Service is concerned, it is only in accordance with the 1954 Rules that the officers so appointed after consultation are assigned a particular cadre pertaining to a State or group of States. It is in the light of the aforesaid provisions that in disciplinary matters as well, a definite role has been assigned to the Central Government. Rule 7(2) of the 1969 Rules clearly provides that penalty of dismissal or removal or compulsory retirement shall not be imposed on a member of service except by an order of the Central Government.

24. Thus, in terms of the provisions of various Rules/Regulations as discussed above, the Central Government has been assigned a definite role so far as recruitment/appointment and disciplinary matters and other ancillary matters in respect of a member of All Indian Service including a member of Indian Police Service are concerned.

25. Penalty of dismissal or removal or compulsory retirement in terms of Rule 7(2) of the 1969 Rules can be inflicted upon a member of Indian Police Service only by an order of the Central Government. Thus, severance of employee-employer relationship of a member of Indian Police Service on punishment of dismissal, removal or compulsory retirement takes into effect only by an order to be passed by the Central Government. As per the scheme of the 1969 Rules, it is the State Government as also the Central Government which are empowered to institute disciplinary proceedings against a member of Indian Police Service and take further proceedings in the disciplinary inquiry, however, if a member of Indian Police Service is to be awarded penalty of dismissal, removal or compulsory retirement, it can be done only by an order to be passed by the Central Government. Thus, in disciplinary matters, cessation of contract of employment in case of a member of Indian Police Service

takes place only by an order to be passed by the Central Government even if the concerned member of Indian Police Service belongs to a particular State cadre and also even if the disciplinary action is taken against such an officer in relation to certain allegations or charges relating to discharge of his duties while serving the State Government.

26. Thus, if the aforementioned provisions of various Rules and Regulations are kept in mind, we are unable to agree with the submission made by learned senior advocate for the petitioner that the phrase "acceptance" occurring in the first proviso to Rule 16(2A) of the 1958 Rules has to be construed only to mean that it is incumbent upon the Central Government to accept the proposal made by the Central Government on a prayer made by the member of Indian Police Service seeking voluntary retirement. If severance of employee-employer relationship in case of punishment of dismissal, removal or compulsory retirement takes place under an order to be passed by the Central Government, in our opinion, the voluntary retirement, which also ultimately results in severance of relationship between the employee and employer, has to be in terms of an informed decision to be taken by the Central Government.

27. The submission, thus, of Mr. Shaikh that “acceptance” cannot be equated with “approval” in case of voluntary retirement sought by a member of Indian Police Service, is highly misplaced. In our considered opinion, when a proposal on the prayer made by a member of Indian Police Service seeking voluntary retirement is made by the State Government, the Central Government has to apply its mind to all the relevant factors and materials and the attending circumstances to arrive at a conclusion whether or not to accede to such a prayer made by the officer concerned. The act of “acceptance” as required by the first proviso appended to Rule 16(2A) of the 1958 Rules does not, in our opinion, mean performance of a ministerial act and therefore, “acceptance” by the Central Government of the proposal of the State Government cannot be a routine function of the Central Government.

28. Learned counsel for the petitioner has laid much emphasis on the guidelines contained in the letter of the Government of India dated 16th October 1980, which provide that in a situation where disciplinary proceedings are pending or contemplated against the officer seeking voluntary retirement, for imposition of major penalty and the disciplinary authority is of the view that imposition of major penalty or dismissal or removal would

not be warranted, the notice of voluntary retirement has to be accepted. Accordingly, it has been argued that it is the disciplinary authority, which, in the opinion of the learned senior advocate appearing for the petitioner in this case, is the State Government, has to form an opinion as to whether the disciplinary proceedings, either pending or contemplated, would ultimately warrant either of the major penalties of dismissal or removal from service and once the State Government in the instant case has formed the opinion that the disciplinary proceedings contemplated against the petitioner would not warrant any major penalty, the Central Government ought to have accepted the proposal sent by the State Government without giving any thought to it.

29. We are unable to find ourselves in agreement with the said submission made on behalf of the petitioner for the reason that even if the State Government may have formed the opinion that the departmental proceedings contemplated against the petitioner would not warrant either of the major penalties, the Central Government will be well within its authority and power under the proviso appended to Rule 16(2A) of the 1958 Rules to form its own opinion as to whether the disciplinary proceedings pending/contemplated, would or would not result in a major

penalty. Merely because, in the opinion of the State Government, the departmental proceedings which were contemplated against the petitioner at the relevant point of time would not have warranted major penalty, will not suffice for the purposes of arriving at the decision whether to accept or not the prayer made by the petitioner seeking voluntary retirement.

30. In case it is held that the Central Government is bound by the opinion expressed by the State Government in respect of the departmental proceedings resulting in either of the major penalties in all circumstances, it will amount to misconstruing the provisions contained in the first proviso appended to Rule 16(2A) of the 1958 Rules where prayer for voluntary retirement can be granted only once a notice of retirement is accepted by the Central Government. Acceptance of notice of voluntary retirement tendered by a member of Indian Police Service cannot be automatic on the recommendation made by the State Government; rather, the Central Government has to apply its mind on all the materials and circumstances of the matter and has to take a conscious and well-informed decision.

31. Even otherwise, if we scrutinize the language in which the first proviso appended to Rule 16(2A) of the 1958 Rules is couched, what we find is that the said provision requires

acceptance of the notice of voluntary retirement by the Central Government, which exercise by the Central Government precedes making of an application seeking voluntary retirement by the officer concerned to the State Government. Thus, the ultimate authority to accept the notice of retirement is vested in the Central Government. The guidelines contained in the letter of the Central Government dated 16th October 1980 has to be, thus, read as supplemental to the proviso appended to Rule 16(2A) of the 1958 Rules, which are statutory in nature. The guidelines contained in the letter dated 16th October 1980 cannot be construed to mean that once the State Government expresses its opinion that departmental proceedings pending/contemplated may not result in either of the major penalties, then, in all circumstances, such a recommendation is necessarily to be accepted by the Central Government. The proviso does not speak of acceptance of opinion formed by the State Government in respect of the departmental proceedings resulting in either of the major penalties; rather, it speaks of acceptance of notice of voluntary retirement.

32. The provision of Rule 16(2A) of the 1958 Rules engaged attention of Hon'ble Supreme Court in the case of **Ashok Kumar Sahu vs. Union of India & Ors.** reported in **(2006) 6**

SCC 704, where the Rule, as it existed prior to and after 1st July 1988 has been quoted in paras 12 and 13 of the said judgment, which are extracted hereinbelow: -

12. *Sub-rule (2-A) of Rule 16, with which we are concerned therein, reads as under:*

"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 on 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 State 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)."

13. *The said rule, however, was amended by a notification dated 1-7-1988 in the following terms:*

"In Rule 16 of the All India Services (Death-cum-retirement Benefits) Rules, 1958 -

(i) in the proviso to sub-rule (2), for the words 'State Government concerned', the words 'Central Government' shall be substituted;

(ii) in the first proviso to sub-rule (2-A), for the words 'State Government concerned', the words 'Central Government' shall be substituted."

33. Prior to its amendment of Rule 16(2A) vide notification dated 1st July 1988, notice of retirement was required to be accepted by the State Government, whereas after its amendment, the offer of retirement made by a member of service is required to be accepted by the Central Government

and not by the State Government. Hon'ble Supreme Court has discussed the difference between the expressions "approval" and "acceptance" and opined that the expression "approval" presupposes an existing order, whereas in "acceptance", application of mind on the part of the competent authority is a *sine qua non*. Para 18 of the said case is extracted hereinbelow:

"18. *The expression "approval" presupposes an existing order. "Acceptance" means communicated acceptance. A distinction exists between the expressions "approval" and "acceptance". Whereas in the latter, an application of mind on the part of the competent authority is sine qua non, approval of an order only envisages statutory entitlement. Approval of an order is required as directed by the statute. It can be given a retrospective effect. Even valid contract comes into being only after the offer is accepted and communicated. Where services of an employee are dispensed with, the order takes effect from the date when it is communicated and not from the date of passing of the order."*

34. Thus, in view of what has been held by the Hon'ble Supreme Court in ***Ashok Kumar Sahu*** (supra), it is clear, beyond any doubt, that acceptance of notice of voluntary retirement tendered by a member of Indian Police Service requires application of mind before it is accepted by the competent authority in the Central Government. "Application of mind" can, thus, never mean that the act of "acceptance" is to be performed by the Central Government in a routine manner as if it is only a ministerial function. The decision under the proviso

to Rule 16(2A) of the 1958 rules has to be a conscious decision based on consideration of relevant factors.

35. Thus, we unhesitatingly hold that in the instant case, by not accepting the recommendation of the State Government's proposal contained in the letter dated 16th October 2019, the Central Government has acted well within its authority available to it under the first proviso to Rule 16(2A) of the 1958 Rules. Even otherwise, the proposal contained in the letter of the State Government dated 16th October 2019 cannot be construed to be a recommendation made by the State Government for accepting the prayer for voluntary retirement made by the petitioner. The said letter is only a proposal where the State Government has given certain details and its opinion that the departmental proceedings, which were contemplated against the petitioner at the relevant point of time, may not result in either of the major penalties. The Central Government, however, is not bound by such an opinion formed by the State Government, otherwise, the proviso appended to Rule 16(2A) of the 1958 Rules will be rendered otiose, where the Central Government is the final authority to accept the notice of retirement tendered by the officer concerned.

36. In view of the foregoing discussions, we are of the unambiguous opinion that the function assigned to the Central Government under the proviso appended to Rule 16(2A) of the 1958 Rules cannot be construed to mean as a routine exercise; rather, the Central Government is required to consider the entire material available before it and thereafter take a conscious and well-informed decision based on relevant considerations for accepting or refusing to accept the notice of voluntary retirement given by a member of Indian Police Service.

37. As regards the issue (c) mentioned above in paragraph 18, it is to be noted that admittedly, there are three charge-sheets which have presently been issued against the petitioner. The first charge-sheet is dated 17th June 2020, the second charge-sheet is dated 6th October 2020 and the third charge-sheet is dated 24th February 2022. The said charge-sheets are on record. The first charge-sheet dated 17th June 2020 contains two articles of charges. The first article of charge states that the petitioner, while working as Deputy Inspector General of Police, Economic Offences Wing, State Criminal Investigation Department contracted second marriage during subsistence of the first marriage while his first spouse was alive and not divorced and, thus, he violated Rule 19(2) of the All India Service (Conduct)

Rules 1968. The second charge in the charge-sheet dated 17th June 2020 is that the petitioner, while posted as Deputy Inspector General of Police, has been mentally and physically harassing, abusing and assaulting his first wife and children and compelling them to accept his second marriage. As to whether such charges may warrant minor or major penalty has to be left for consideration of the Disciplinary/Appointing Authority. It is not the function of this Court at this juncture to pre-judge the issue, however, we may note that in respect of the charges contained in the charge sheet dated 17th June 2020, the State Government was having enough material to contemplate the disciplinary proceedings and it is for the competent authority to opine as to whether the charge-sheet would result in either of the major penalties. Though we refrain from expressing our opinion as to whether the charge-sheet dated 17th June 2020 may warrant either of the major penalties, however, reference may be made to a judgment dated 19th March 2021 rendered by a Division Bench of Delhi High Court in Writ Petition (C) No. 3613 of 2021 in the case of ***State of Rajasthan & Anr. vs. Pankaj Kumar Chaudhary & Ors.*** In the said judgment, it has been observed that ethical standards of an act of bigamy cannot always, whatever the facts may be, lead to maximum

punishment of dismissal/removal of Government servant from service. Thus, an act of bigamy indulged into by a Government employee, if is subject matter of disciplinary proceedings, may lead to maximum punishment of dismissal or removal or may not result in maximum punishment. Opinion in this regard has to be formed by the competent authority and therefore, we refrain ourselves from giving any such finding on the issue as to whether the charges on the basis of which the disciplinary proceedings were contemplated against the petitioner at the relevant point of time would or would not result in any of the major penalties.

38. We may, nonetheless, notice a judgment of Hon'ble Supreme Court in the case of ***Khursheed Ahmad Khan vs. State of Uttar Pradesh & Ors.***, reported in **(2015) 8 SCC 439**, wherein the penalty of removal inflicted on the employee concerned, based on the charge of contracting second marriage during existence of the first marriage without permission of the Government, was not interfered with.

39. The second charge-sheet is dated 6th October 2020, however, the incident in respect of which the said charge-sheet has been issued relates to a function held on 29th March 2019, accordingly, the charge relates to a date prior to the date when

the petitioner had tendered the application seeking voluntary retirement. Accordingly, at the relevant point of time, in respect of the charges mentioned in the charge-sheet dated 6th October 2020, departmental proceedings were contemplated against the petitioner.

40. Regarding the third charge-sheet, issued on 24th February 2022, it is to be noticed that the said charge-sheet also contains a charge in respect of the alleged misconduct against the petitioner concerning some speech delivered by him in a function held on 29th March 2019. Thus, this charge also relates to the period prior to the date on which the petitioner had tendered the application seeking voluntary retirement. As observed above, as to whether such a charge would entail either of the major or minor penalties, has to be left to the competent authority and it is not for the Court to pre-judge any such issue.

41. As far as the reliance placed by Mr. Shaikh, learned senior advocate for the petitioner on the judgments cited by him is concerned, in our opinion, none of the judgments come to the rescue of the petitioner. The first judgment in the line of judgments cited by Mr. Shaikh is the judgement of Hon'ble Supreme Court dated 1st September 2000 in ***Special Leave Petition (C) No. 11726 of 2000 (Delhi Jal Board vs.***

Mahinder Singh). The said judgment pertains to right of an employee to be considered for promotion by Departmental Promotion Committee and thus, does not have any application to the facts of the present case.

42. The other judgment cited by Mr. Shaikh is in the case of **Mumbai Cricket Association vs. Pramod G. Shinde**, reported in **2011(3) Bom. C.R. 52**. The said matter pertains to the Industrial Disputes Act and the standing orders issued therein, whereas the matter relating to the petitioner is to be governed by the Act of 1951 and the Rules/Regulations framed thereunder, hence, no benefit can be derived by the petitioner by relying on this judgment.

43. The other judgement cited on behalf of the petitioner is in the case of **Rambahu Vyankuji Kheragade vs. Maharashtra Road Transport Corporation**, reported in **1995 Supp (4) SCC 157** which also relates to the Industrial Disputes Act and other related labour laws.

44. The judgement in the case of **Manohar Pandit Marathe vs. President Sharda Vidya Prasarak Mandal & Ors.**, reported in **2014 (6) Bom.C.R. 62** pertains to Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and hence, will have no application to the instant case.

(F) CONCLUSION:

45. In view of the aforesaid discussion, the impugned judgement and order dated 7th December 2023 passed by the Tribunal does not warrant any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

46. Resultantly, the writ petition fails, which is hereby dismissed.

47. There shall be no order as to costs.

48. Interim application, if any, stands disposed of.

Digitally signed
by JAYANT
VISHWANATH
SALUNKE
Date:
2024.07.23
17:03:10 +0530

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)