

HIGH COURT OF DELHI

Bench: Justice Suresh Kumar Kait and Justice Shalinder Kaur

Date of Decision: January 03, 2024

W.P.(C) 6522/2020

RAJESH KUMAR

..... Petitioner

VS

UNION OF INDIA & ORS.

.... Respondents

Legislation:

Article 226, 227 of the Constitution of India

Central Administrative Tribunal (Jurisdiction and Procedure) Rules

Indian Contract Act, 1872

Rule of CCS Pension Rules, 1972

Income Tax Act, 1961

Subject:

Writ petition challenging the dismissal of an Original Application by the Tribunal. The petitioner sought redress for his inadvertent withdrawal from the BSNL Voluntary Retirement Scheme 2019 due to a technical glitch. The judgment revolves around the interpretation of the scheme's provisions, the contractual nature of voluntary retirement, and the scope of judicial review in policy and procedural matters.

Headnotes:

Writ Petition – Voluntary Retirement Scheme – Challenge against Tribunal's dismissal of Original Application – Petitioner's inadvertent withdrawal from the BSNL Voluntary Retirement Scheme 2019 due to a technical error – High Court upholds Tribunal's decision. [Para 1, 6-7, 10, 20-31]

BSNL Voluntary Retirement Scheme 2019 – Implementation and applicability – Eligibility criteria and procedural requirements for opting and withdrawing from the scheme – High Court's interpretation of the scheme's clauses. [Para 3-5, 18-19]

Technical Error in Online Application – Petitioner's claim of accidental withdrawal from VRS due to a computer glitch – High Court's consideration of procedural compliance over claimed inadvertent error. [Para 25-26, 28-29]

Contractual Nature of VRS – Application of Indian Contract Act, 1872 to VRS – High Court’s interpretation of voluntary retirement as a contractual offer that can be withdrawn during validity period. [Para 24]

Judicial Review – Scope in matters of policy decisions and contractual obligations – High Court’s stance on non-interference in policy matters and procedural lapses. [Para 21, 31]

Decision – Dismissal of Writ Petition – High Court finds no infirmity in Tribunal’s findings and upholds the dismissal of petitioner’s claim for inclusion in VRS post withdrawal. [Para 31]

Referred Cases:

Madhya Pradesh State Transport Corporation v. Manoj Kumar & Anr. [(2016) 9 SCC 375]

Representing Advocates:

Petitioner: Mr. Kushal Chaudhary and Mr. Angad Ahluwalia, Advocates.

Respondents: Mr. Ravi Sikri, Senior Advocate with Mr. Piyush Sharma, Mr. Shivam Dubey, Mr. Anuj Kumar Sharma, Mr. Deepank Yadav, Ms. Kanak Grover, and Mr. Nachiket Chawla, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

JUDGMENT SHALINDER

KAUR, J.

1. The present writ petition has been filed under Article 226 read with Article 227 of the Constitution of India by the petitioner seeking to aside the impugned order dated 07.07.2020 passed by the learned **Central Administrative Tribunal, Principal Bench, New Delhi** (hereinafter referred to as “Tribunal”) in **Original Application** No. 17/2020 [hereinafter referred to as “OA”] whereby the learned Tribunal dismissed the OA filed by the petitioner holding that no fault can be found with the Scheme as also its implementation and that the action of respondents in not accepting the request of the petitioner herein cannot be interfered with. The petitioner is also seeking a direction for respondents to reconsider acceptance of VRS option of the petitioner.

Factual Background:

2. Petitioner was appointed as the Junior Telecom Officer in **Bharat Sanchar Nigam Ltd.** (hereinafter referred to as “BSNL”) / respondent No. 2 Organization on February 21, 1994, and was subsequently promoted to the

post of Assistant General Manager. At present, petitioner is posted in BSNL-Rohtak, Haryana.

3. **Department of Telecommunication** (hereinafter as “DoT”) issued an office memorandum dated October 29, 2019 intimating to BSNL, the Union Cabinet’s approval of the DoT’s proposal of Voluntary Retirement Scheme for the revival of the BSNL. Pursuant thereto, BSNL vide notification dated November 04, 2019 introduced the “**BSNL Voluntary Retirement Scheme-2019**” (hereinafter as “VRS”), for reducing the employee cost and providing various attractive benefits to the eligible employees opting for voluntary retirement before the normal date of superannuation. Employees aged 50 and above were eligible to opt for the voluntary retirement under VRS.
4. The terms of the VRS stipulated that an employee could opt for it within one-month period starting from November 04, 2019 and ending on December 03, 2019 till 5.30 PM. Further, the effective date of superannuation under the said scheme was January 31, 2020.
5. Petitioner submits in the petition, being eligible to opt for the scheme on November 19, 2019, he applied for the VRS as required under terms and conditions of the said scheme within the prescribed period through the Online Employee Self Service (hereinafter as “ESS”) portal and also submitted 3 signed physical copies to the concerned authorities for approval.
6. Petitioner further submits that on the last date i.e. December 03, 2019, while checking online application status, due to technical error/reason/glitch at 5:29 PM, petitioner wrongly exercised the „withdraw option” and thus his application status reflected as „withdrawn”. The petitioner then brought to the notice, this inadvertent error/technical glitch through representations to all concerned officers regarding the mistaken exercise of the „withdrawal” option made in the last minute and to accept his request for VRS. The petitioner did not submit physical signed copy of withdrawal option as required under the scheme. However, the respondents treated the representation as petitioner having not opted for VRS, since the ESS portal reflected his status as „withdrawn”. Further, petitioner approached the respondent no. 3 on December 09, 2019 and on December 11, 2019 explaining the position and sought to „opt for VRS” instead of „withdrawing from the scheme”.
7. Later on, the respondents issued a list of candidates who opted for VRS, where the petitioner’s name did not find mention in the said list. Furthermore, on December 24, 2019, the respondents issued an order stating that there is no requirement of submission of signed copy of option/withdrawal in writing and the online submission of the application shall be treated as final.

- Although Para 7(iii) provision of VRS 2019 specifically provided that request of withdrawal is also required to be submitted in hard copy duly signed. However, the respondents vide letter dated December 27, 2019, declined the request of the petitioner stating that online submissions will be considered final and on December 27, 2019, directed the petitioner to submit the physical signed copy of „withdrawal form“ for further submission to the Circle Officer.
8. In the meanwhile, petitioner filed a Right to Information (RTI) application to which he received a response dated February 24, 2020 wherein, it was mentioned that withdrawal option will be treated as final only when the employee submits the signed hard copy.
 9. It was submitted that petitioner has never submitted the signed hard copy for withdrawal of his application despite which respondents have arbitrarily and without considering the terms and conditions of the scheme treated the application of the petitioner as withdrawn. Aggrieved with aforesaid circumstances, petitioner preferred OA No. 17/2020 before the learned Tribunal. Vide impugned order dated 07.07.2020, the learned Tribunal dismissed the OA and failed to consider the aforesaid submissions and erroneously relied upon its judgment and order dated 27.01.2020 passed in O.A. No. 210/2020 without considering that the case of the petitioner is factually different from the facts in O.A. No. 210/2020. In the said OA, the petitioners deliberately wanted to change their option after submitting their application under VRS, however in case of the petitioner, the change in the option to „withdrawn“ was inadvertent and due to some technical issue. His intention to opt for VRS was clear and bonafide when he made representations to the respondents bringing to their notice about the inadvertent act of withdrawing his application thereby requesting to consider his application for VRS by ignoring the technical error resulting in submission of a request for withdrawal.
 10. It was submitted, in any case, neither the petitioner has followed up the request for withdrawal by submitting physical copies of the documents nor have the respondent even processed the said withdrawal option till date. The petitioner further submitted that he had supported/fulfilled the purpose of introduction of BSNL Voluntary Retirement Scheme 2019 which was widely publicized to enable the eligible employees to exercise the option for VRS. Learned Tribunal committed a grave error by dismissing his application and in view of the aforesaid submissions and circumstances, the petitioner was compelled to file the present petition.

Petitioner's submissions

11. Mr. Kushal Chaudhary, learned counsel submits, the communication of „offer“ under the VRS was to be done in 2-pronged method, as per the Para 6 of the Notification dated November 04, 2019, the said communication was to be done via filling the option form through the ESS Portal along with 3 signed hard copies of the online option, which the petitioner had successfully done. Though, inadvertently, at the last moment of closing of the scheme, the petitioner had entered the „withdrawal option“ but he did not submit the signed copy in writing regarding withdrawal of his option for VRS. In view of the same, there was never a valid communication of „withdrawal of offer“, making the act *void ab initio* and maintaining status quo as on November 19, 2019, when petitioner opted for VRS. It was further submitted that the two-tier system of acceptance/withdrawal is for the purpose to maintain checks and balances on the computed based system which may be faulty. For the option of

„withdrawal“ to constitute a valid revocation of *offer* to opt for VRS, it was submitted that as per Section 3 of the Indian Contract Act, there had to be an intention to revoke, **since there was no follow up on petitioner's option to withdraw, therefore, the petitioner's case cannot be treated as withdrawal from VRS.**

12. Thus, the learned Tribunal has committed a grave error by dismissing the O.A. filed by the Petitioner and thereby denying the petitioner of his right to avail VRS under the scheme. It was submitted that no prejudice shall be caused to BSNL/Respondent Organization or to the Public Exchequer in accepting the option of the respondent for VRS, whereas, otherwise, the petitioner would be compelled to continue his service.

Respondents' submissions

13. Mr. Ravi Sikri, learned senior counsel for the respondents submits that VRS scheme was implemented as part of revival of BSNL. The Corporate Office vide order dated November 04, 2019 issued by BSNL explicitly advised all the employees to carefully go through the provisions of the scheme before exercising option. It was submitted that the employees could opt out/withdraw only once during the defined period, the employees were also given a second option “decide later” tab whereby, the employees were free to take informed decision either „to opt“ or „decide later“. Employees who opted for „to opt“ were required to submit the online application and the hard copy with signature to a declaration therein. Options exercised were thus, final on the closing date and time for all practical purposes under the VRS. The signed

hard copy was meant for seeking approval of competent authority whereby upon acceptance, VRS will be issued along with terminal benefits of the VRS optee after processing the same.

14. Learned counsel further submit that it is a matter of record that petitioner withdrew his VRS option within the prescribed period and accordingly, his case for VRS could not be considered. Thus, he has been serving the respondent company with attendant benefits of salary and allowances.
15. It was also submitted that the Management had no authority to change the subsisting option/withdrawal and had no power to allow any application beyond the mandate of the scheme. The clarification dated December 24, 2019 issued by the respondents also reiterated this position.
16. Furthermore, the learned Tribunal rightly confirmed that BSNL"s VRS 2019 Scheme conforms to Hon"ble Supreme Court"s Judgement *in Madhya Pradesh State Transport Corporation v. Manoj Kumar & Anr.* [(2016) 9 SCC 375] so far as contractual obligations of the parties are concerned. Even as proposal of VRS was a part of revival plan of BSNL approved by Union Cabinet as the funding for the scheme was from the Government of India, therefore, BSNL had to assess the eligibility of all employees opting and approximate the amount required for payment of exgratia for retiring employees under the scheme and then convey the requirements of funds for paying the terminal benefits to him. Therefore, learned Tribunal has rightly dismissed the OA filed by the petitioner as he has no case to insist for change of his „withdrawal" option to „opt for" VRS.

Reasons and Conclusions:

17. Submissions heard at length on behalf of the parties. The impugned order and record has been perused.
18. On perusal of the records including the VRS scheme, it is pertinent to mention the important clauses of the VRS scheme. The procedure to be followed under the Scheme is provided under Clause 7 of the Scheme which reads as under:

“PROCEDURE:

(i) Eligible employee(s) shall be required to submit option to voluntarily retire from service under the Scheme during the period prescribed and as per the provisions of the scheme.

(ii) The VRS option of employee(s) facing Departmental/ Judicial proceedings shall be accepted and Earned Leave encashment, Transfer grant, GPF/ CPF and pension will be released provisionally as per Rule of CCS Pension Rules 1972.

Provided that the payment of Ex-gratia and Gratuity, shall be released only on the conclusion of and based on the outcome of vigilance/ disciplinary proceedings.

(iii) The option once exercised under this Scheme shall be final and decision of the competent authority shall be binding on the concerned employee(s).

Provided that the employee(s) will be allowed to withdraw the option only once at any time till the closing time and date of option.

Provided further that the request for withdrawal of option shall be submitted online along with signed copy in writing.

(iv) The authority for acceptance of option under this scheme shall be the competent authority as defined in clause 3(c).”

19. It is also important to mention Clauses 8 and 9 of the Scheme, which are reproduced down under:-

“8. GENERAL CONDITIONS:

(1) The Scheme is not negotiable and shall not be a subject matter of any. industrial dispute.

(ii) There shall be no recruitment in BSNL against the posts falling vacant on account of voluntary retirement under the Scheme, and these posts will be abolished.

(iii) The employee(s) retired under this Scheme, shall not be eligible for Re- employment in any other CPSE.

Provided that in case any employee desires to take up re-employment in any CPSE, such employee shall have to refund the entire amount of ex- gratia received under the Scheme to BSNL before joining such CPSE. BSNL shall remit the refunded amount to the government.

(iv) All payments under the scheme and any other benefit payable to the employee(s) by BSNL shall be subject to prior settlement/repayment in full of loans, advances, returning of property and any other dues payable by such employee(s) to BSNL.

Provided that such employee can give an option to settle the pending dues to BSNL from the amount of payment under Ex-gratia, Gratuity or other retirement benefits.

(v) In the event of the death of an employee after submission of option but before the effective date of voluntary retirement under this Scheme, the amount of Ex-gratia payment shall not be released to the family/legal heirs of deceased employee:

Provided that other retirement benefits as applicable according to the existing rules shall be paid to the family / legal heirs.

(vi) All payments made under the scheme shall be subject to deduction of tax at source as per Income Tax Act 1961, wherever applicable. (vii) The Competent Authority shall have absolute discretion either to accept or reject the request of an employee seeking Voluntary Retirement under the scheme without assigning any reason.

(viii) The benefits payable under this scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the scheme or otherwise.

(ix) An employee who voluntarily retires under this scheme or his/her family or legal heirs shall have no claim or compensation except the benefits under the Scheme.

9. In case of any doubt or ambiguity over the meaning/ interpretation of any of the terms of this scheme, the decision of CMD BSNL shall be final and binding.”

20. It is evident from the above, the issue before us is whether the option of VRS as opted by the petitioner was in compliance with the procedure and whether the respondent failed to treat the representation by petitioner as per the scheme.
21. It is a matter of policy, we might not go into the inadvertent technical glitches that took place at the end of petitioner as pleaded by him while exercising his option. The only document that remains relevant for dealing with the above issue is the BSNL VRS-2019 itself.
22. Worthwhile to note the petitioner waited till the last minute to check the status of his application and following an afterthought exercised the option to „withdraw“ from the scheme. Even otherwise, we need not go into what was the actual motive of petitioner“s exercise of „withdrawal“ option at the last minute either inadvertent or not.
23. It cannot be ignored that a month“s period from November 04, 2019 to December 03, 2019 till 05:30 PM under the Scheme is sufficiently long enough for an employee to make an informed choice to exercise his option, furthermore, under the Scheme the option to „decide later“ was also available with the undecided/indecisive employees. The option of „withdrawal“ was to be exercised only once at any time till the closing date and time of the scheme.
24. In our judgment rendered on 03.01.2024 in the matter of **Rakesh Kumar Chopra v. BSNL & Others**, we have already held that the present VRS-2019 is contractual in nature and not statutory in character and provisions of the Contract Act, 1872 would apply. It was further held that VRS floated by the employee is an invitation to offer and the application submitted by the employee pursuant thereto is an offer and that offer can be withdrawn during the validity period.
25. The entire case set up by the petitioner is that the petitioner had vide his application dated November 19, 2019 (through online submission and then submitting three physical copies) had opted for Voluntary Retirement under the Scheme. The petitioner further states that on last day of cut-off date i.e. December 3, 2019 at around 5:25 PM, the petitioner was confirming the status of his earlier application, having opted for VRS, on the computer, however, due to some technical fault the concerned computer stopped working/hanged and in the process of reviving the same, it came to the notice of the petitioner that the status of his application was showing as withdrawn

- and by the time petitioner tried to opt for VRS again, the option time 5:30 PM was over.
26. Relying upon the proviso to clause 7 (iii) of the scheme wherein, it provided that the request for withdrawal of option shall be submitted online along with signed copy in writing, the petitioner has stated he did not follow up his erroneous act of „withdrawal“ by submitting physical documents in support of the said technical error in pressing upon the withdrawal option.
 27. On December 24, 2019, BSNL Corporate Office issued clarification to all Heads of the Telecom Circles that VRS option as existing in the ERP Portal on the closing date and time of VRS option shall be treated as final and no subsequent written request for change of status shall be entertained. VRS option as existing in the ERP Portal should be submitted to the Competent authority for acceptance and after acceptance, they shall be relieved from BSNL service on January 31, 2020.
 28. The Scheme was open from November 04, 2019 upto December 03, 2019 (5.30 PM), thus, any option whether to apply or withdraw it, (withdrawal option could be exercised only once), could have been between the said time phase. The requirement was to apply online and then submit a print out of the same in physical form. The petitioner admittedly applied for VRS option online and the petitioner also exercised the option of withdrawal online, whether such exercise was by mistake or on account of computer glitch or otherwise is immaterial. The option for withdrawal was already exercised by the petitioner before the end of the cut-off date that is at 05.29 PM on December 3, 2019. It was for the petitioner to take a print out and submit a signed copy of the same. The petitioner, however, seeks to take advantage of non-submission of signed print out.
 29. The petitioner, taking advantage of the aforesaid, addressed a letter on December 04, 2019 claiming that on December 03, 2019 at around 17:29 hrs without malafide intention, accidentally due to Computer malfunction, the withdrawal option button was clicked which he did not want to press and that he immediately tried again to opt for the VRS option but by that time the option time was over. But any letter on December 04, 2019 or thereafter, after the cut-off date had already come into effect (December 03, 2019), is irrelevant.
 30. The cut-off date will apply both while opting for VRS and also for withdrawal of the option already applied for. There cannot be different yardstick for cut-off date for withdrawal of option already applied for or to pull out of withdrawal option. As would be overwhelmingly pellucid from herein above, the learned

Tribunal has rightly taken note of all the factual aspects and dismissed the OA.

31. Accordingly, we do not find any infirmity in the findings rendered by the learned Tribunal. Consequently, the petition is hereby dismissed.

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