

CASE NO.:
Appeal (civil) 59 of 2004

PETITIONER:
Ashok Kumar Sahu

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 08/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

The appellant is a member of Indian Police Service. The Joint Cadre of Assam and Meghalaya was assigned to him. However, on or about 4.6.1997, he was placed under suspension. Disciplinary proceedings were also initiated against him. Statement of imputation of misconduct was served upon him on 9.7.1997. On his completion of 20 years of service, he expressed his desire to retire from the services with effect from 1.8.1997 in terms of Sub-rule 2A of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 ('the Rules', for short) by a notice dated 30.4.1997 addressed to the Chief Secretary, Government of Assam, which reads as under :

"To
The Chief Secretary to the Govt. of Assam,
Dispur, Guwahati-6

Sub: VOLUNTARY RETIREMENT FROM ALL
INDIA SERVICES.

Ref : Under Sub-Rule (2A) of Rule 16 of the All India
Services (Death-cum-Retirement Benefits) Rules
1958.

Sir,

I have the honour to inform you that on personal grounds I would like to quit the Indian Police Service, on voluntary retirement, to which I was recruited on the basis of the examination held in 1974 and allotted to the Joint Cadre of Assam and Meghalaya, with 1975 as the year of allotment.

Whereas, I will be completing 22 years of service as on the 16th July, 1997; I intend to voluntarily retire from service with effect from the 1st August, 1997 afternoon.

Meanwhile, I would like to request you to kindly issue necessary directions so that my pension papers are processed and finalized as per existing rules, and oblige.

Yours faithfully,

Sd/-
(A.K. Sahu)"

He, however, did not receive any communication in regard to the acceptance of the said offer before the said date either from the Union of India from the State of Assam. The Government of Assam vide its letter dated 26th May, 1997, forwarded the said request of the appellant for its approval by the Ministry of Home Affairs. The Central Government referred the matter to the Joint Cadre Authority, which agreed to accept the request of the appellant to go on voluntary retirement without prejudice to the existing disciplinary proceedings against him. The resolution of the Joint Cadre Authority reads thus :

"After perusal of the representation of Shri A.K. Sahu, IPS praying for voluntary retirement with effect from 1.8.1997 under rule 16(2A) of the All India Services (DCRB) Rules, 1953, the Joint Cadre Authority is of the view that Shri Sahu may be allowed to go on voluntary retirement without prejudice to the existing disciplinary proceedings against him."

On 1.8.1997, the Home Secretary, Assam, Dispur sent a W.T. message to the Home Secretary, New Delhi stating :

"NO. HMA (IPS) 58/Pt.V/36 DATED 1.8.97 (.)
KINDLY REF. MINISTRY'S LETTER NO.
31012/4/97-II DATED 27.5.97 REGARDING
VOLUNTARY RETIREMENT OF SHRI A.K. SAHU,
IPS (U/S)(.) JOINT CADRE AUTHORITY HAS
APPROVED OF THE VOLUNTARY RETIREMENT
OF SHRI SAHU, AND THE RESOLUTION OF THE
JOINT CADRE AUTHORITY IS SENT BY POST (.)
FOR KIND INFORMATION (.)"

On receipt of the said W.T. message, the Central Government communicated its approval through fax message dated 13th August, 1997 to the Chief Secretary of the Government of Assam, Dispur, which reads as under :

"APPROVAL OF THE GOVT. OF INDIA IS HEREBY
CONVEYED TO THE ACCEPTANCE OF THE
REQUEST OF SHRI A.K. SAHU, IPS (A&M: 75) TO
RETIRE VOLUNTARILY FROM SERVICE WITH
EFFECT FROM 1.8.1997 WITHOUT PREJUDICE TO
THE ON-GOING DISCIPLINARY PROCEEDINGS (.)
REQUEST TO ISSUE NECESSARY ORDERS/
NOTIFICATIONS ACCORDINGLY (.)"

By reason of a notification dated 8.9.1997, the appellant was communicated that the Governor of Assam has accepted his voluntary retirement in the following terms :

"The Governor of Assam is pleased to accept the prayer for voluntary retirement tendered by Shri A.K. Sahu, IPS (U/S) and to allow Shri Sahu to go on voluntary retirement with effect from 1-8-97 (F.N.) without prejudice to the ongoing Disciplinary proceedings against him."

Questioning the legality of the said communication, a writ petition

was filed by the appellant before the Gauhati High Court. A Division Bench of the said High Court dismissed the said writ petition opining that the request of the appellant for voluntary retirement being accepted by the Joint Cadre Authority and a notification having been given effect thereto, no irregularity or illegality can be said to have been committed by the respondents. The appellant is, thus, before us.

The appellant, who appeared in person, has raised the following contentions in support of this appeal :

- (i) In terms of the proviso appended to Rule 16 (2A), the State of Assam could not have accepted the offer of voluntary retirement;
- (ii) The offer of the appellant to retire voluntarily could have been accepted only prior to 1.8.1997 in terms of the circulars issued by the Central Government, as the employee has a right to withdraw the offer even after acceptance by the State Government;
- (iii) The respondents being public authorities, were bound to follow the Rules laid down by the Central Government which alone could have applied its mind to the request of the appellant and not the State of Assam.

The learned counsel appearing on behalf of the respondents, on the other hand, submitted that

- (i) The Central Government having approved the proposal of the Joint Cadre Authority, the requirements of the Rules have substantially been complied with;
- (ii) It was not necessary to accept the offer of the appellant on or before 1.8.1997 in view of the extant Rules;
- (iii) The appellant having withdrawn his offer only in 1999, i.e., much after acceptance of his offer, it was invalid in law.
- (iv) Concededly the matter relating to voluntary retirement on the part of an employee belonging to an All India Services is governed by the said Rules;

In law, offer of voluntary retirement can be made and accepted in terms of the said Rules, inter alia, in three different situations :

- (a) On completion of 20 years' of service;
- (b) When an employee is placed under suspension; and
- (c) If he has completed more than 20 years' of service or 50 years of age.

Whereas in the first situation acceptance of the proposal is not required, in the second and third, acceptance of the offer by the competent authority would be required. The appellant was born on 23rd January, 1953. He was directly appointed as a member of the Indian Police Service on 16.7.1975. Indisputably, the conditions of services are governed by the provisions of the All India Services Act, 1951 and the Rules and Regulations framed thereunder. He belonged to Joint Cadre of Assam & Meghalaya. It is not in dispute that by a notice dated 30th April, 1997, he sought for voluntary retirement with effect from 1.8.1997.

In terms of Sub-rule (2) of Rule 16 of the Rules, an employee may retire from his services after giving at least three months' previous notice in writing to the State Government on the date on which he completes 30 years of qualifying service or 50 years of age or any date thereafter specified under the scheme. The proviso appended to the said Rule states that no member of the service under suspension shall retire from service except with specific approval of the State Government concerned.

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

"(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 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)"

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 \026

(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 (2A), for the words "State Government concerned", the words "Central Government" shall be substituted."

In view of the said amendment, thus, an offer of retirement made by a member of service requires acceptance by the Central Government and not by the State Government. The materials on records, as noticed hereinbefore, clearly point out that the authorities proceeded on the basis of the Rules prior to amendment. In terms of the amended Sub-rule (2A) of Rule 16, the offer of the appellant was required to be accepted by the Government of India and not by the Joint Cadre Authority. The question of application of mind by the Joint Cadre Authority for the purpose of acceptance of the said offer and/or approval thereof by the Government of India does not arise. At the first instance it was obligatory on the part of the competent authority of the Central Government to apply its own mind and pass an appropriate order. The competent authority could not have delegated its power to the Joint Cadre Authority or for that matter, the State of Assam.

It is not denied or disputed before us that acceptance of the offer of the appellant by the Central Government was necessary on two counts :

(1) The appellant was under suspension; and (2) it was imperative in terms of the proviso appended to Sub-rule (2A) of Rule 16.

When terms and conditions of service of an officer are governed by the All India Services Rules, the State Government exercises delegated power. Prior to amendment of the Rules, the State Government was the competent authority to accept such offer of voluntary retirement, whereas after the amendment, it is the Central Government alone which is competent therefor. Cessation of a contract of employment or status in law would be completed in terms of the provisions of the Rules when the competent authority passes an appropriate order. The action, in terms of the Rules, can be taken by the prescribed authority alone and not by any other authority. An order passed by an authority without jurisdiction would be non-est in the eyes of law. It is coram non judice.

In State (Anti Corruption Branch) Govt. of NCT of Delhi & Anr. vs. Dr. R.C. Anand & Anr. [(2004) 4 SCC 615], it was held :

"The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence

including the transcript of the tape record have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority, [See Jaswant Singh v. State of Punjab (AIR 1958 SC 124) and State of Bihar v. P.P. Sharma (1992 Supp(1) SCC 222)]."

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. {See State of Punjab vs. Amar Singh Harika [AIR (1966) SC 1313].}

We are, however, not oblivious of the fact that under certain circumstances, the expression, "approval" would mean to accept as good or sufficient for the purpose of intent. Ratification is noun, of the verb "ratify". It means the act of ratifying, confirmation, and sanction. The expression "ratify" means to approve and accept formally. It means to conform, by expressing consent, approval or formal sanction. "Approve" means to have or express a favourable opinion of to accept as satisfactory. In the instant case, there was no question of any ratification involved as wrongly assumed by the High Court. {See Maharashtra State Mining Corpn. Vs. Sunil, s/o Pundikarao Pathak [(2006) 5 SCC 96].}

We are, not concerned with such a case herein.

We have made the aforementioned observations keeping in view the fact that if the Central Government intended to consider the matter from the latter angle, it would have communicated the same to the appellant directly. It did not do so. It approved the action of the Joint Cadre Authority. It directed the State of Assam to issue orders/notifications accordingly. As the offer of the appellant was to be accepted by the Central Government and communicated to him, the issuance of notification dated 1.8.1997 by the Governor of Assam accepting the said offer is bad in law.

We, however, as at present advised, do intend to finally determine the question raised by the appellant that the acceptance was required to be communicated before 1.8.1997. When an employee offers to retire from service, his offer cannot be said to have accepted automatically unless the rule provides therefor.

We may, however, notice some of the decisions cited at the bar.

In Balram Gupta vs. Union of India & Anr. [(1987) Supp SCC 228], this Court was concerned with Rule 48-A of the Central Civil Services (Pension) Rules, 1972. This Court observed :
"The appellant states that three months notice was required by the rules of service to which the appellant belonged. The said voluntary retirement was sought under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). The Rule 48-A provides as follows:
48-A. Retirement on completion of 20 years' qualifying service: (1) At any time after a

Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

This Court therein was concerned with a contention raised by the appellant that the authorities could not have withheld the permission sought for by him to retire voluntarily. In that case the appellant sent his letter on 24th December, 1980 seeking voluntary retirement from service, which was stated to have been accepted by an order dated 20th January, 1981 with effect from 31st March, 1981. The appellant withdrew his offer seeking voluntary retirement by a letter dated 31st January, 1981. This Court held that he was entitled to do so and there was no valid reason to withhold the permission of the respondents stating :

"We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

We are not concerned with such a situation in this case.

In Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. vs. Suman Behari Sharma [(1996) 4 SCC 584], this Court was concerned with a rule in terms whereof the request of the employee to retire from service would become effective only if he is permitted to retire.

In State of Haryana and Others vs. S.K. Singhal [(1999) 4 SCC 293], this Court again was dealing with a matter where an automatic retirement was claimed.

Cases of voluntary retirement can broadly be divided into the following three categories:

- (i) Where voluntary retirement is automatic and comes into force on the expiry of notice period;
- (ii) When it comes into force; unless an order is passed within the notice period withholding permission to retire, and

(iii) When voluntary retirement does not come into force unless permission to this effect is specifically granted by the Controlling Authority.

Jagannadha Rao, J. in State of Haryana & Ors. vs. S.K. Singhal [(1999) 4 SCC 293], interpreting sub-rule (1) of Rule 5.32 (B) of the Punjab Civil Services Rules (Vol. II) noticed that the same contemplated "notice to retire" and not a request seeking permission to retire. Proviso appended to the said sub-rule (2) of Rule 5.32 (B) comprehended a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period". It was, thus, held that in terms of the said Rules, the rejection of offer to retire voluntarily was to be communicated within the notice period. In view of the aforementioned provisions, the Court preferred to follow Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441] and B.J. Shelat v. State of Gujarat [(1978) 2 SCC 202] wherein it was held that if no order of refusal has been passed within the notice period, the voluntary retirement would take effect automatically.

We are, however, not concerned with any of the aforementioned category of cases. In fact it is a reverse situation. The proviso appended to Sub-rule (2A) of Rule 16 mandates acceptance by the Central Government. It although does not specify a date for communicating such acceptance but ordinarily such acceptance should be within the period of notice so as to make cessation of contract of employment complete.

We may observe that an appropriate order should be passed within a reasonable period. Normally, three months notice is required to be given as the said period is considered to be reasonable and it is expected that a decision would be taken within the said period. But the rule is not an inflexible one. It would depend upon the facts and circumstances of each case.

The Appellant, as noticed hereinbefore, withdrew his offer only in 1999 by a letter dated 10.8.1999 which was impermissible as prior thereto the offer had already been accepted and a notification had also been issued.

However, our findings aforementioned on the first contention of the appellant would not mean that we would exercise our discretionary jurisdiction in favour of the Appellant. The Appellant did not assign any specific reason as to why he intended to retire. Admittedly, a disciplinary proceeding was initiated against him and he was placed under suspension. He did not withdraw his offer even after he was placed under suspension. Even then the matter was considered by the Joint Cadre Authority and it recommended acceptance thereof subject to the disciplinary proceedings. The Appellant must be aware of the stand taken by the authority but despite the same, he did not withdraw his offer. In the disciplinary proceedings no action was taken against him and only a punishment of censure was imposed only on the premise that the Appellant had already made an offer of voluntary retirement. Acceptance of the offer of the appellant for voluntary retirement by the Authority must be judged only on that premise.

Although legally the Appellant is right that his offer should have been accepted by the Central Government, and the same should have been communicated to him, we are satisfied that the Central Government proceeded on a wrong premise by approving the proposal and not accepting the offer. A wrong procedure was adopted by it in not communicating the order of the acceptance. It has been accepted that the Central Government has communicated its decision only to the State Government.

The main thrust of the Appellant had all along been on the payment of terminal benefits.

A Three Judge Bench of this Court by an order dated 29.07.2002 directed the State of Assam to pay terminal benefits to the Appellant.

Although the Appellant was represented by an advocate, it appears, when this Court on 25.4.2003 upon hearing the parties was about to dictate an order, a submission was made by him that his retrial terminal benefits have not been paid and he was not in a position to engage an advocate, whereupon the Supreme Court Legal Services Committee was requested to engage an advocate on his behalf. The said direction was complied with. From the proceeding sheet dated 5.8.2003, it appears that a Division Bench of this Court dismissed the Special Leave Petition recording :

"Learned counsel for the petitioner states that pension papers would be submitted within 15 days. Learned counsel for the respondents state after proper verification retrial benefits would be paid to the petitioner within one month thereof. We, direct that the said amount shall be paid with 6 per cent simple interest from the date of acceptance of voluntary retirement."

However, on an application filed for restoration of the said order the matter was restored. Yet again a Three Judge Bench of this Court, albeit without prejudice to the rights and contentions of the parties, noted that the Appellant would submit his pension papers within 15 days from the said date and the State of Assam was directed to pay the terminal benefits with simple interest at the rate of 6% with effect from the date on which the Second Respondent alleged that he had retired. Pursuant to or in furtherance of the said order, the Appellant submitted his pension papers. He is said to have made certain corrections as regards the bank account in which the amount was to be deposited.

The learned counsel appearing on behalf of the State of Assam, on instructions, stated that the matter is pending in the office of the Comptroller and Auditor General.

Having regard to the facts and circumstances of this case, we are of the opinion, that it is a fit case where we should exercise our jurisdiction under Article 142 of the Constitution of India. It is now well settled that the court in appropriate cases may decline to exercise its jurisdiction although it would be lawful to do so. {See A. Umarani v. Registrar, Cooperative Societies & Ors. [(2004) 7 SCC 112] and Des Raj (Deceased) Through LRS. & Ors. v. Union of India & Anr. [(2004) 7 SCC 753].}

Keeping in view the principles laid down in the aforementioned decisions, we are of the opinion that the interest of justice, having regard to the peculiar facts and circumstances of this case, shall be sub-served if instead of directing reinstatement of the Appellant in service, the following directions are issued :

- (i) The Appellant shall be paid all his pensionary benefits with interest at the rate of 9% per annum with effect from 1st August, 1997.
- (ii) The Appellant shall be paid his salary for the period 1st August, 1997 to 8th September, 1997.
- (iii) The Second Respondent shall pay and bear the costs of the Appellant, which is quantified at Rs.50,000/-.

The Appeal is allowed to the aforementioned extent and on the aforementioned terms.