



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

% **Judgment reserved on: November 07, 2023**  
**Judgment pronounced on: January 03, 2024**

+ W.P.(C) 5404/2020

RAKESH KUMAR CHOPRA ..... Petitioner

Through: Ms. Gauri Puri, Ms. Aditi Gupta and  
Mr. Kashish Tiwary, Advs.

versus

BSNL & ORS. .... Respondents

Through: Mr. Ravi Sikri, Sr. Adv. with Mr.  
Piyush Sharma, Mr. Deepank Yadav,  
Mr. Anuj Sharma and Ms. Kanak  
Grover, Advs. for BSNL

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **JUDGMENT**

#### **SHALINDER KAUR, J**

1. The civil writ petition has been filed under Article 226 read with Article 227 of the Constitution of India by the petitioner seeking to set aside the impugned order dated 27.01.2020 passed by the Learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter as "Tribunal") whereby the learned Tribunal dismissed the **Original Application** (hereinafter as "OA") No. 254/2020 filed by the petitioner along with the batch of OAs filed by the various employees of the BSNL, holding that the request for **Voluntary Retirement Scheme** (hereinafter as "VRS") cannot be withdrawn after the last date stipulated under the scheme



in light of the judgment titled **Madhya Pradesh State Road Transport Corporation v. Manoj Kumar & Anr.** [(2016) 9 SCC 375].

### **Factual Background**

2. Petitioner was employed in **Bharat Sanchar Nigam Ltd.** (hereinafter as “BSNL”), as a Junior Telecom Officer on February 23, 1991 and got promoted to the post of Assistant General Manager in the office of TDM Kullu, Himachal Pradesh with effect from June 29, 2018. He has been working with BSNL since then and was due to superannuate on March 31, 2028.

3. The respondent no. 1 is the BSNL, which is a public sector undertaking, the respondent no. 2 is the Director (Finance), BSNL, respondent no. 3 is the General Manager, BSNL, Corporate Office.

4. On October 29, 2019, the **Department of Telecommunication** (hereinafter as “DoT) conveyed to BSNL the decision of Union Cabinet for introduction of VRS vide office memorandum F. No. 30-04/2019-PSU Affairs dated October 29, 2019, introduced for optimising and right sizing of human resources of BSNL by providing attractive benefits to the eligible employees opting for voluntary retirement before the original date of superannuation. The scheme was introduced for revival of BSNL and Mahanagar Telephone Nigam Limited. Pursuant thereto, BSNL vide letter no. 1-15/2019-PAT (BSNL) dated November 04, 2019 introduced the VRS 2019 for its employees and the scheme came into force from the date of notification.



5. The terms of the VRS stipulated one-month period starting and ending on November 04, 2019 and December 03, 2019 till 5.30 PM, respectively for availing the benefits of the scheme. Further, the effective date under the said scheme was January 31, 2020. Due to logistical challenges for implementing the scheme of this size, eligible employees were informed to avail the option of VRS through the Online Portal i.e. Employee Self Service (ESS) portal in BSNL, there was no physical method to apply or withdraw from the aforesaid scheme.

6. Clause 7(iii) of the VRS provided that the option once exercised, will be final and decision of the Competent Authority shall be binding on the employee. Further, option of withdrawal was also provided under VRS, to be exercised only once at any time till the closing date and time of the option.

7. It is not disputed that in view of the attractive benefits that scheme offered, the petitioner submitted his application on November 08, 2019 for seeking voluntary retirement within a span of original period fixed under the scheme i.e. November 04, 2019 to December 03, 2019. However, on December 17, 2019, the petitioner withdrew the application considering several drawbacks in the terms of the financial implications and that he had submitted the application in rush and haste for opting for voluntary retirement as there were conflicting opinions amongst the staff. Pursuant to his discussion with the family and colleagues, the petitioner submitted representation on December 20, 2019 through the All India BSNL Executive Association seeking withdrawal of the option, which was much before it was



accepted by the competent authority under the scheme i.e. January 13, 2020. Similarly, other employees of BSNL submitted their representation for withdrawal from VRS after closing date of the option but before it was accepted by the competent authority.

8. On December 24, 2019, BSNL issued a letter no. 1-15/2019-PAT(BSNL) Part-I to all the heads of Telecom circles, BSNL, in respect of clarifications for all those employees, who submitted written representation for change of option exercised by them in the ERP portal.

9. On December 26, 2019, BSNL issued a letter no. 1-15/2019-PAT(BSNL)-Part-I reiterating the clarification dated December 24, 2019 and stated that no action on the representation would be taken either by BSNL Corporation or by concerned circles / cadres, controlling authorities and the representations were treated as disposed of. Despite the petitioner's repeated request not to accept his option for VRS, the competent authority accepted the same on January 13, 2020.

10. Aggrieved by the dismissal of his representation, petitioner filed an OA before the learned Tribunal seeking to quash the respondent's Letter no. 1-15/2019-PAT (BSNL)-Part-I dated December 26, 2019 passed by respondents Nos. 1 to 3 and to direct respondents to allow his withdrawal from VRS and to allow him to continue his service up to the normal date of his superannuation.

11. The Principal Bench of the Tribunal dismissed the OA of the petitioner vide impugned order dated 27.01.2020, along with other OAs filed by similarly placed employees of BSNL. Hence, the present petition.



### **Submissions by Petitioner:**

12. Ms. Gauri Puri, learned counsel for the petitioner submitted that present petition pertains to an important question of law regarding principle of “offer” and “acceptance” under the Indian Contract Act, 1872 and its applicability to the right of an employee to seek withdrawal from VRS introduced by BSNL. Further, the issue in crux is whether the petitioner could have withdrawn from the scheme prior to its acceptance by the Competent Authority, despite the Scheme stipulating that the option once exercised can be withdrawn at any time till closing time and date of the option. Reliance was placed on **National Textile Corporation Ltd. vs. M.R. Jhadav** [(2008) 7 SCC 29].

13. Learned counsel while relying on case of **Bank of India vs. O.P. Swarnakar** [(2003) 2 SCC 721] submitted that VRS are contractual in nature and provisions of Contract Act would be applicable to the scheme.

14. It is further submitted by relying on the observation made by the Hon’ble Supreme Court in **New India Assurance Company Ltd. vs. Raghuvir Singh Narang & Anr.** [(2010) 5 SCC 335], that an employee can withdraw the offer (that is option exercised) before its acceptance by the competent authority.

15. It is also submitted, that in the judgment titled **Madhya Pradesh State Road Transportation Corporation vs. Manoj Kumar & Anr.** [(2016) 9 SCC 375], the Hon’ble Supreme Court noted that scheme floated



by an employee would be treated as invitation to offer and application submitted by an employee pursuant thereto would be treated as an offer of the employee, subject to its acceptance by the employer, leading up to a “promise” within the meaning of Section 2(b) of Contract Act, 1872, ultimately to become enforceable as a contract. However, the Hon’ble Supreme Court carved out an exception to this principle and held that in such cases offer has to be withdrawn during the validity period of the Scheme and not thereafter, even when if such offer is not accepted during the period of the Scheme.

16. It was submitted that the observations of Hon’ble Supreme Court was based upon the fund created for VRS by the corporation whereby it was observed that if employee are permitted to withdraw from VRS at a later stage, the calculations of the corporation would fail. Contrary to the scheme in **Madhya Pradesh State Road Transportation Corporation (supra)** wherein the fund was yet to be created, BSNL had an approved budget allocation. Therefore, the learned Tribunal failed to appreciate the fundamental difference in VRS introduced by BSNL and MPSRTC. BSNL’s VRS was introduced with objective of optimizing and right-sizing of human resources with an approved budget for payment of ex-gratia on VRS and preponed pensionary liability.

17. Petitioner further submitted that VRS by BSNL stands on a different footing vis-a-vis the VRS introduced by other entities like MPSRTC or State Bank of Patiala. For State Bank of Patiala, the scheme was introduced for downsizing and increasing profitability, the creation of fund was dependent



on number of applications received. It was submitted that BSNL vide letter dated December 26, 2019, in an arbitrary and unilateral manner, passed a single order disposing of multiple applications by respective employees who sought withdrawal from VRS. The petitioner was due to superannuate on March 31, 2028, so his request for withdrawal ought to have been accepted by Competent Authority in an independent manner, especially when the request for withdrawal was made on December 17, 2019 much prior to its acceptance by the Competent Authority on January 13, 2020. It was submitted that the learned Tribunal failed to examine all the above relevant facts and passed the impugned order on 27.01.2020 erroneously and is ex-facie illegal which ought to have been examined by the Tribunal.

### **Respondents' Submissions**

18. While rebutting the above submissions, respondents submitted that VRS was essentially implemented as part of revival of BSNL and the corporate Office of BSNL vide order dated November 04, 2019 had explicitly advised all the employees to carefully go through the provisions of the scheme before exercising option to subscribe to the Scheme. Further, employees were also given an option to 'decide later', in addition to the two options to opt in or withdraw. Employees who opted for the scheme online were required to submit the same in hard copy with signature to a declaration therein. Options thus exercised as on closing time and date were final for all practical purposes. The said hard copy was meant for seeking approval of competent authority whereby upon acceptance, VRS was to be issued along with terminal benefits.



19. Learned senior counsel appearing on behalf of the respondents submitted that the petitioner had undergone all the process as designed under the scheme and his retirement under the scheme had materialized and he availed all monetary benefits to the tune of Rs. 74 lacs as terminal benefits. He had actively filed all forms/pension papers leading up to these benefits.

20. It was submitted that provisions of the scheme would indicate that it being operative between November 04, 2019 and December 03, 2019 till 05:30 PM, the option of withdrawal was to be exercised only within that time frame. It is a different matter, in case of acceptance of VRS of an employee by competent authority, the effective date would be January 31, 2020. It was further submitted that petitioner filed the request for withdrawal of VRS on December 17, 2019 which is beyond the closing date. Thus, learned Tribunal has rightly upheld this position and rejected the OA filed by the petitioner.

21. Further, eligible employees could avail the option for VRS through the ESS Portal, however, there was no physical mode to either avail or withdraw from VRS scheme. After the closing date of option, neither the Management or Employee had any authority to change subsisting option or its withdrawal. It was submitted that clarification letter dated December 26, 2019 issued by respondents further reiterates this position.

22. It was submitted that learned Tribunal rightly relied upon **Madhya Pradesh State Transport Corporation v. Manoj Kumar & Anr. (supra)** to hold that so far as contractual obligations of the parties are concerned, the VRS was to be funded by the Government of India, BSNL had to assess





various factors including eligible employees opting and approximate amount required for payment of ex-gratia, etc and convey the assessed requirements of funds for paying the terminal benefits to the government. The said ex-gratia was to be paid in 4 tranches and over 78,000 employees who opted in the scheme. Thus, the contention of petitioner that required funds for the scheme were already worked out and approved by Government of India is not based on the records.

### **Reasons and Conclusions**

23. We have heard at length learned counsels appearing for the parties. We have also considered the averments in the petition as well as findings recorded by the learned Tribunal. At the outset, we deem it appropriate to carve out the legal principles concerning the issue before us as dealt by Hon'ble Supreme Court in case of **Madhya Pradesh State Road Transport Corporation vs. Manoj Kumar and Ors.** (2016) 9 SCC 375, referring to the principles governing voluntary retirement under Scheme of VRS as under:

“13. To begin with, we deem it appropriate to consolidate, with required astuteness, various legal principles touching upon the issue at hand, which are sparged in various judgments, and then apply those principles to the facts in these cases. Though much case law has emerged, reference to few judgments, which take into consideration the earlier cases as well, would suffice. Since the High Court has referred to the judgment in the case of O.P. Swarnakar, we deem it apt to initiate the discussion with that judgment, which is also earliest of the four judgments we are going to refer to.

14. In O.P. Swarnakar, which was a judgment rendered by a three Judge Bench of this Court, various nationalised banks were the Appellants and batch of matters pertaining to these banks were decided. The State Bank of India, constituted under the State Bank of India Act,



1955 and other banks taken over under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 adopted in the year 2000 separately but similar schemes known as the "Employees Voluntary Retirement Scheme". The question involved in those appeals was whether an employee opting for voluntary retirement under the said Schemes was precluded from withdrawing that offer. The Scheme adopted by the State Bank of India differed from the Scheme of the other nationalised banks inasmuch as that scheme permitted withdrawal of the applications for voluntary retirement by February 15, 2001. The said Scheme was applicable in relation to employees who on the date of application had completed 15 years of service or 40 years of age. The period during which the said Scheme was to remain operative varied from bank to bank. However, in case of the Punjab National Bank, the said Scheme was to remain in operation from November 1, 2000 to November 30, 2000. Para 10.5 of the said Scheme barred an employee from withdrawing the request made for voluntary retirement after once exercising the option. Other sub-paras of para 10 provided that a request for voluntary retirement would not take effect unless accepted by the competent authority who would have absolute discretion to accept or reject that request. The said Scheme prescribed a particular procedure for making an application for seeking voluntary retirement. A large number of employees submitted their applications, out of whom a small number of employees withdrew their offer. Despite withdrawal of their offer, the same was accepted. In some cases, offers, despite withdrawal thereof, were accepted after the expiry of the operation period of the Scheme. Writ petitions were filed in various High Courts to challenge the acceptance of the employees' applications by the banks despite their withdrawal. Before the Punjab & Haryana High Court, the validity of the said Scheme also was challenged. Some writ Petitioners sought issuance of a writ of mandamus to the respective banks to pay unto them their lawful dues strictly in terms of the Scheme. The High Court held that: (i) the said Scheme was not a valid piece of subordinate legislation as Sections 19(1) and 19(4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 had not been complied with, (ii) even assuming the said Scheme to be valid, it was open to an employee to withdraw his option before the same had been accepted and effectively enforced, and (iii) since the Scheme was invalid, no relief could be granted in the writ petitions seeking any benefits under the Scheme. The Bombay High Court and other High Courts held that Clause 10.5 of the said Scheme was not operative as the employees had an indefeasible right to withdraw their offer before the same was accepted. The Uttarakhand High Court dismissed a writ petition as not maintainable on the ground that the Petitioner had bound himself by the terms not to withdraw the application for voluntary retirement.



15. Eschewing the discussion on other aspects which are not relevant for these cases, insofar as issue at hand is concerned, the Court held that the Scheme was floated with a purpose of downsizing all employees. Such a Scheme, although may incidentally be beneficial also to the employees, but was primarily beneficial to the banks. The ultimate aim and object of floating such a Scheme was for the purpose of effective functioning of the banks so as to enable them to compete with private banks. On the other hand, the Court also remarked that though bank employees do not enjoy the 'status' as in the case of Government employees, nevertheless, they do enjoy security of their employment inasmuch as these nationalised banks were 'States' within the meaning of Article 12 of the Constitution. The banks, therefore, cannot take recourse to 'hire and fire' for terminating the services of the employees. They are required to act fairly and strictly in terms of the norms laid down therefor. Their actions in this behalf must satisfy the test of Articles 14 and 21. Proceeding therefrom, the Court took the view that a contract of employment is also a subject matter of contract and insofar as the question whether the VRS Scheme was an offer/proposal or merely an invitation to offer is essentially a question of fact. The Court further discussed the law relating to 'offer' and 'acceptance' with the observations that it could not be stated in simplistic form. In the context of the VRS, however, the Court applied this law of contract by deducing the following conclusions: (i) The banks treated the application from the employees as an offer which could be accepted or rejected. (ii) Acceptance of such an offer was required to be communicated in writing. (iii) The decision making process involved application of mind on the part of several authorities. (iv) The decision making process was to be formed at various levels. (v) The process of acceptance of an offer made by an employee was in the discretion of the competent authority. (vi) The request of voluntary retirement would not take effect in praesenti but in future. (vii) The bank reserved its right to alter/rescind the conditions of the Scheme. Thus, the nationalised banks in terms of the Scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees. It was held that the Scheme constituted invitation to an offer and not an offer. As a fortiori, the application submitted by an employee was to be treated as offer/proposal of the employee, and when accepted by the bank it would constitute a 'promise' within the meaning of Section 2(b) of the Indian Contract Act, 1872 and only then the promise becomes an enforceable contract. On this analogy, the Court held that since employees had withdrawn their offer before it was accepted, they had a right to do so. However, the Court found that the case of State Bank of India stood slightly on a different footing as it had not amended the VRS Scheme and



even permitted withdrawal of applications by February 15, 2001. Also, the Scheme floated by the State Bank of India contained Clause (7) which laid down the mode and manner in which application for voluntary retirement was to be considered and this Clause created an enforceable right. The Court noted that in the event the State Bank of India failed to adhere to its preferred policy, the same could have been subsequently enforced by the Court of law and, therefore, it would amount to some consideration. On this basis, insofar as appeals of State Bank of India are concerned, the same were allowed but appeals of nationalised banks were dismissed. Following passages from this judgment capture the essence of the legal principle laid down:

“113. The submission of the learned Attorney-General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The Scheme was in force for a fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the employees concerned would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of (sic) the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer. We, therefore, are of the opinion that the decisions of this Court, as referred to hereinbefore, shall apply to the facts of the present case also.

114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the Scheme, in our considered opinion, could not have resiled therefrom.

115. The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.”

16. Next decision, in the chronology, which we want to refer to is the case of Romesh Chander Kanoji. This is also a judgment rendered by a three Judge Bench, in which case of O.P. Swarnakar was specifically referred to and discussed. The principle laid down in O.P. Swarnakar was explained and in the process the Court noticed different outcomes insofar as State Bank of India is concerned vis-a-vis nationalised banks. This distinction was brought out and explained by this Court in the following manner:





question of any "consideration" for the condition in the scheme that the employee will not withdraw from the option exercised. Subject to any challenge to the validity of the scheme itself, the terms of the statutory scheme will be binding on the employees concerned, and once the option is exercised by an employee to voluntarily retire in terms of the retirement package contained in the scheme, the employee will not be entitled to withdraw from the exercise of the option, if there is a bar against such withdrawal.”

24. After referring to the above law, the Hon’ble Supreme Court held as under:-

“20. Reading of the aforesaid judgments would clearly demonstrate that in those cases where the Scheme is contractual in nature (and not statutory in character as was seen in State Bank of India's case), provisions of the Indian Contract Act would apply. The VRS Scheme floated by the employer would be treated as invitation to offer and the application submitted by the employees pursuant thereto is an offer which does not amount to resignation in praesenti and the offer can be withdrawn during the validity period. This would be the position even when there is a Clause in the Scheme that offer once given cannot be withdrawn at all. **However, exception to this principle is that in such cases offer is to be withdrawn during the validity period of the Scheme and not thereafter even when if it is not accepted during the period of the Scheme.** That is the clear mandate of Romesh Chander Kanoji. The rationale which is given for carving out this exception is contained in para 9 of the said judgment, which has already been reproduced above. To put it pithily, what is highlighted is that such schemes are funded schemes and time is given to every employee to opt for voluntary retirement. Because these are funded schemes, the Management is required to create a fund. The creation of this fund depends upon a number of applications; the cost of the Scheme; liability which this Scheme would impose on the employer and such other variable factors. In this situation, if the employees are allowed to withdraw from the Scheme at any time even after its closure, it would not be possible to work out the Scheme as all calculations of the employer would fail.”



25. We have examined the Scheme in question in the conspectus of the legal position set forth above. The relevant clauses for the purpose of present petition are as under:

**“4. OPERATION OF THE SCHEME:**

The effective date of Voluntary Retirement under this scheme shall be 31-01-2020. The Scheme shall come into force from the date of issue of notification inviting option for voluntary retirement under the scheme and shall remain in operation as per the dates mentioned below:

(a) Date of start of option: 04-11-2019

(b) Date of closing of option: 03-12-2019 up to 05:30PM.

....

**7. PROCEDURE:**

....

**(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).”**

26. From the aforesaid provisions of the scheme, it is manifested that certain conditions were provided and also a specific form in which application/option for VRS under the scheme was to be made.

27. It is also relevant to mention that Clause 8(vii) further provided :



“The Competent Authority shall have the absolute discretion either to accept or reject the request of an employee seeking voluntary retirement under the scheme without assigning any reason.

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

28. From the above provision of the scheme, it is clear that the Scheme in question is not statutory in nature but contractual in nature and the provisions of the Contract Act would apply. The law being no longer *res integra*, the short question before us is whether the petitioner was entitled to withdraw from the option exercised for Voluntary Retirement under the Scheme, after the Scheme was closed. It was categorically provided in the Scheme that:

“the scheme shall remain open from 04.11.2019 up to 03.12.2019 (5.30 PM). The effective date of voluntary retirement under this scheme will be 30.01.2020.”

Thus, there is no condition that the Scheme will be effective only on acceptance by the employer, rather the scheme gives an enforceable right to the employee to retire, by exercising his option, which effective date is January 30, 2020. This Scheme came to an end on December 03, 2019 (5.30 PM). Thus, the employees who had opted for VRS could withdraw their option before December 03, 2019 (05:30 PM) after which the mode of acceptance contemplated under scheme would operate and BSNL would proceed to scrutinize the applications.

29. In the present case, the petitioner vide his letter dated December 17, 2019 sought to withdraw his option on the ground that he is under stress for taking this decision and that his family circumstances are not allowing him



