

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00071/2020

ORDER RESERVED ON 16.10.2020

DATE OF ORDER: 23.10.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Sri S.L.Sivaraju, 54 years

S/o Late Sri.Lingaiah

Occn: Telecom Technician

O/o SDOT (Groups)

BSNL, Mandya Telecom District

Mandya : 571 401.

....Applicant

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India

To be represented by its Secretary

Ministry of Communications & IT

Sanchar Bhavan

20 Ashoka Road

New Delhi : 110 001.

2. Department of Telecommunications

To be represented by its Secretary

919, Sanchar Bhavan

20, Ashoka Road

New Delhi : 110 001.

3. Bharat Sanchar Nigam Limited

by its Chairman and Managing Director

Corporate Office (Personnel-II Section)

Bharat Sanchar Bhavan

4th Floor, Janpath

New Delhi : 110 001.

4. Chief General Manager Telecom
Karnataka Circle
No.1, Swamy Vivekananda Road
Halasuru, Bengaluru : 560 008.

5. Principal General Manager Telecom
BSNL Mysuru Business Area
No.69, Temple Road
1st Cross, Behind St Joseph School
Jayalakshmpuram
Mysuru : 570 012.

6. Telecom District Manager
Mandya Telecom District
BSNL, Opp: Kala Mandir
Mandya : 571 401.

....Respondents

(By Advocate Shri Vishnu Bhat)

O R D E R

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

- a. Quash the order bearing No.VRS 2019/2200/2214/A/000000004, dated 3.1.2020, Annexure-A8, passed by Telecom District Manager, Mandya Telecom District, Mandya R-6 herein so far as it pertains to applicant.
- b. Direct the respondents to permit the applicant to be in service until his attaining the superannuation age or otherwise whichever is earlier.

2. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri P.A. Kulkarni, are that the Applicant is an employee of Bharat Sanchar Nigam Limited (BSNL), a wholly owned PSU by the Government of India (GOI). BSNL

came to be established with effect from 1st October 2000 with its registered and corporate office in New Delhi. The applicant was, earlier, an employee of the Department of Telecommunication (DOT), in GOI, who came to be absorbed on a permanent basis in BSNL.

3. The Department of Telecom vide its order dated 29th of October 2019, conveyed a decision taken by the GOI to reduce costs by immediately offering VRS to employees of BSNL of age 50 years and above. In this connection BSNL also notified a VRS scheme 2019 by its order dated 4th November 2019. Under this scheme all eligible employees were given the option to opt for voluntary retirement. The important dates of the scheme were as follows:

Start of giving Option: 4th November 2019

Closing date of Option: 3rd December 2019 up to 5:30 p.m.

Effective date of retirement: 31st of January 2020

The eligible employees were required to fill the option form through ESS portal and take three printouts, sign all of them in blue ink and submit the signed copies to their respective controlling officer within 3 days of submitting the online option. One copy was required to be pasted in the Service Book of the employee, the second copy was to be sent to the competent authority for acceptance of VRS and the third copy was required to be given back to the employee after taking acknowledgment. This was specified in the step by step guide for exercising the option for the VRS 2019 Scheme, as given in Annexure-II of the Circular, dated 04.11.2019(Annexure-A2) issued to all Heads of Telecom Circles by BSNL. It was stipulated that the option once exercised under this scheme shall be final and the decision of the competent authority shall be binding on the concerned employee.

The employee would be allowed to withdraw the option only once at any time till the closing time and date of the option. It was further stipulated that the request for withdrawal of option should also be submitted online along with a signed copy in writing. A step by step guide for exercising the option for VRS 2019 under the scheme was provided by the BSNL.

4. As provided for in the step by step guide, the applicant also submitted his VRS option through the online portal on 13th of November 2019. He also took three printouts of his online option as required under the scheme. However he subsequently changed his mind and did not sign and submit these print out copies to the concerned Authority, as required under the step by step guide. Subsequently, he also gave written representations requesting for treating his online application as withdrawn and allowing him to continue in service till his normal date of superannuation. These representations were submitted to the respondents on 13th December 2019, 23rd December 2019, and 26th December 2019. In his application, he further said that he was under the impression that non submission of the hard copies of the VRS option would be as good as withdrawal of the application, and hence, out of ignorance, he forgot to withdraw his option online within the stipulated date for withdrawal. However, the BSNL corporate office in its communication dated the 26th of December 2019 addressed to all Telecom circles/ Administrative units in India, has taken the position that VRS options, as existing in the ERP portal at the closing date and time of the VRS option, shall be treated as final, and no subsequent request for change of status shall be entertained.

5. The Respondent No.6, who was a Competent Authority under the scheme, notified the list of voluntary retirees under the scheme, on 3rd of January 2020.

The notified list also included the name of the applicant. The applicant was consequently retired from service on the afternoon of 31st January 2020 under the BSNL voluntary retirement scheme 2019. The applicant has since then, been kept out of service from 31st January 2020.

6. The learned counsel for the applicant has submitted that his case is covered under Rule 37-A of CCS Pension rules, 1972 which is applicable to the absorbed employees like the applicant herein. The instant scheme notified by BSNL cannot override the scope and object of Rule 37A incorporated in CCS Pension Rules 1972. Under these rules, a permanent Government servant absorbed in a public sector undertaking, shall be eligible to seek voluntary retirement. Such voluntary retirement has to be sought under Rule 48A of the said rules.

7. Under Rule 48 A, any applicant is allowed to request for withdrawal of his application for VRS, before the intended date of his retirement. However the BSNL VRS scheme 2019 has taken away that right by placing a condition that the option exercised under the scheme will be allowed to be withdrawn only till the closing time and date of options as specified under the scheme, rather than the last date of retirement. The effective date of his retirement is prescribed as 31st January 2020 and the acceptance of his VRS application has been communicated on 3rd January 2020 despite the fact that the applicant had not submitted his signed option form, as required in the scheme, and also represented thrice requesting for withdrawal of his online application.

8. The learned counsel for the applicant has submitted that the very foundation of the controversial scheme is inconsistent with the service conditions governing

the subject of pension applicable to the applicant and is in violation of Article 14 and 16 of the Constitution of India. He has therefore prayed that the order issued by the authorities pertaining to his voluntary retirement should be set aside, as far as it pertains to the applicant, and he should be allowed to continue in service till his normal date of superannuation or otherwise.

9. The learned counsel for the respondents Shri Vishnu Bhat in his reply statement has stated as follows:

- i. The VRS scheme promulgated by BSNL was keeping in view the huge size of manpower covered by the scheme. BSNL is spread over the whole of the country with offices in far flung areas and there is a need for systematic and meticulous planning, administrative as well as financial, in order to achieve the target inherent in the VRS scheme, and its objective to achieve the target for revival of BSNL. Accordingly the scheme provided an online platform through BSNL ERP which is available to all employees for all service matters like salary, leave, medical benefits etc. This ERP has the reach to all the employees of BSNL numbering around one lakh fifty thousand.
- ii. In order to enable an informed choice of option to eligible employees, a one month window from 4th of November 2019 to 3rd December 2019 upto 5:30 p.m. was provided on the ERP portal. It also allowed the withdrawal option by employees within the prescribed period. However, this withdrawn option was allowed only once. The ERP portal also provided the approximate estimate of the benefits available to the employees opting for VRS. Notification of VRS was made available on the intranet as well as the ERP portal and the employees were enjoined to carefully go through the provisions of the scheme which was also available in local vernacular language. Help desk were also made available for assistance to the employees seeking to opt for VRS.

iii. It was further stated that this VRS 2019 scheme is entirely different from the normal voluntary retirement schemes where no additional benefits for forgoing the balance of service are available. Hence this scheme is not covered under rule 48 A as argued by the petitioner. This particular scheme aims at optimising and rightsizing of human resources of BSNL by providing attractive benefits to the eligible employees opting for retirement before the normal date of superannuation. It cannot be equated with normal voluntary retirement schemes.

10. He submitted that the BSNL corporate office had also issued clarifications vide its circulars dated 24th and 26th December 2019 relating to withdrawal from the scheme. It had been clarified, with the approval of the competent authority, that the 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. Consequently, keeping the above in view, no action on such representations shall be taken by BSNL or by the concerned Circles/Cadre controlling authorities.

11. The prayer of the applicant to declare the VRS 2019 scheme as illegal, arbitrary and contrary to law is not legally tenable since he has already read the declaration to the effect that “I declare that I have read and fully understood the terms and conditions of the BSNL voluntary retirement scheme 2019 including the methodology and schedule of payments of admissible benefits and hereby accept them unconditionally”. It is, therefore, only an afterthought, subsequent to having accepted the scheme unconditionally.

12. The applicant's claim that his VRS application is not voluntary and the details regarding VRS have been updated by the help of other officials is also

imaginary. The applicant has accepted that he has got the printouts of his application; thereby he is having full knowledge of his VRS application. He has not complained about any forceful entry of his details in VRS portal. Further, there was every opportunity for the employees opting for VRS to withdraw their application before 3rd December 2019. However, the applicant has not chosen to withdraw his application even though he was having full knowledge of the same and also sufficient time for the same. He has chosen to make representation well after the closing dates, which is clearly an afterthought.

13. Learned counsel for the respondents has further contended that the facts and circumstances of the case and the legal contentions raised in this application are squarely covered by the order of the Principal bench of CAT OA number 210/2220 and connected OAs dated 27 January 2020. The Honorable CAT PB has not found any merit in these OAs and they have been dismissed. The respondents have accordingly prayed that this application may also be dismissed in the interest of justice and equity.

14. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The points for consideration in this case are as follows:

- a. Whether the BSNL VRS 2019 scheme is illegal since it is allegedly violative of Rule 48A of the CCS pension rules 1972. The CCS pension rules allow for withdrawal of VRS option till the proposed date of retirement whereas the deadline fixed for withdrawal in BSNL VRS 2019 scheme is well before the date of retirement.

- b. Whether the applicant should have been allowed to withdraw his online application for retirement which he had made after the announced cut-off date under the scheme, but well before the actual date of retirement.
- c. Whether the online application made by the applicant amounted to a complete proposal, keeping in view the fact that he had not submitted three hard copies of application, duly signed by him in blue ink, as required by the notified guidelines under the scheme.

15. A careful study of the BSNL VRS scheme indicates that it is a special scheme designed to achieve a very special purpose of rightsizing the BSNL. It also aims at providing attractive benefits to its employees which are more than the benefits available under the normal VRS schemes under Rule 48A of CCS Pension Rules. The fact that applicant had considered availing the benefits under the scheme, had voluntarily filled up the application form online and also taken the three printouts as required in the scheme, imply that the applicant had already accepted the broad provisions under the scheme. He cannot therefore, at this stage, turnaround and challenge the legality of the scheme itself, in which he himself had consented to participate.

16. As far as the issue relating to a different time frame fixed for withdrawal under the scheme, as compared to Rule 48A, is concerned, the matter can be considered to be covered under ruling of the Honorable Supreme Court in case of *New India Assurance Company limited Vs Raghuvir Singh Narayan and others in Civil Appeal No.3295/2009[(2010) 5 SCC 335]*. In this case the Supreme Court has summarised the earlier decision in *Swarnakar's* case as follows:

“...If a contractual scheme provides that the voluntary retirement by exercise of option by the employee, will come into effect only on its acceptance by the employer, it will not create any enforceable right in the employee to claim SV

retirement. Any term in such a scheme that the employee shall not withdraw from the option once exercised, will be an agreement without consideration and therefore, invalid. Consequently, the employee can withdraw the offer (that is option exercised) before its acceptance. But if the contractual scheme gives the option to an employee to voluntarily retire in terms of the scheme and if there is no condition that it will be effective only on acceptance by the employer, the scheme gives an enforceable right to the employee to retire, by exercising his option. In such a situation, a provision in the contractual scheme that the employee will not be entitled to withdraw the option once made, will be valid and binding and consequently, an employee will not be entitled to withdraw from the option exercised.”

17. The import of this ruling would be that, since in this case also, an enforceable right is being given to the employee, to retire, by exercising his option, hence he cannot be entitled to withdraw the option already made by him, particularly, since the employer would be bound to consider his request, once it is lawfully made and communicated.

18. Keeping the above points in view, one can safely conclude that there is no illegality in the provisions of the scheme. The provision of an early cut-off date for withdrawal is also perfectly valid and the applicant was required to submit his application for withdrawal before the prescribed date under the scheme.

19. It remains to be considered whether the option exercised by the applicant was complete once he had filled up the form online in the ERP portal but had not submitted the three signed copies of the same as required.

20. A careful reading of the BSNL scheme as notified vide its letter dated 4th of November 2019 indicates the following:

- The administrative office of the employee will **acknowledge receipt of hard copy** of VRS application to the optee under signature of an officer not below the rank of SDE/AO level.

- The officer in charge of service books is required to verify the correctness and completeness of the entries made by the employees on the VRS option form. If any discrepancy is found, the same may be rectified by the HR administrator in consonance with the service book record, **both on the ERP as well as the hard copy.**
- In Annexure 1 annexed with the scheme, it is clearly stipulated that the request for withdrawal option shall be submitted online **along with signed copy in writing.**
- In the Step by Step guide for exercising option for the VRS 2019 (Annexure II of the scheme), Para 6 specifies the following procedure:

“..the eligible employees shall fill the option form through ESS portal and take three printouts, sign all of them in blue ink and submit the signed copies to the respective controlling officer within 3 days of submitting the online option. One copy will have to be pasted in service book, the second copy will be sent to the Competent Authority for acceptance of VRS, and on the third copy, the employee will take acknowledgement.”

21. A careful reading of the scheme of VRS 2019 of BSNL, therefore, clearly indicates that the entire process of exercising the VRS option by an employee required him to take both the steps, that is, to first fill up the option form on the ERP portal, and then to submit three signed copies in blue ink, of the same, to the Competent Authority. In fact, as stipulated in the guidelines, the acceptance of the VRS option was to be done by the competent authority on the hard copy submitted by the applicant only. Even the acknowledgement of the application for VRS was to be taken by the employee on the 3rd hard copy of the application submitted by him. It is therefore very clear that the taking of three printouts of the filled in application form through ERP portal, and submitting the same after signing all of

them in blue ink, was not a mere perfunctory exercise. It was a vital part of the process of exercising option by the employee. The stand taken by the BSNL in its subsequent circular, that the VRS options as existing on the ERP portal on the closing date and time shall be treated as final and no subsequent request for change of status shall be entertained, cannot be taken as correct, until and unless, the VRS option given by the employee in the ERP portal, was accompanied with the three duly signed hard copies submitted by the employee.

22. Supreme Court in its judgement in *Bank of India versus K Mohandas in Civil Appeal No.1942/2009[(2009) INSC 632]* has held the following:

“The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract.”

23. In the case in hand, once the guidelines of the scheme of VRS in BSNL stipulated that both the conditions, one, of filling up the form electronically on ERP, and the second, of submitting three duly signed hard copies, are an important part of the process of exercising the VRS option, then, at a later stage, BSNL cannot change the rules of the game and say that mere exercising of option in ERP portal is sufficient for the employee to submit his VRS option.

24. Keeping the above in view, it is ruled that, in the case in hand, the VRS option cannot be considered to have been finally submitted to the competent authority in BSNL, since the hard copies of the VRS option form, duly signed, had not been submitted by the applicant as prescribed in the guidelines. Hence, the

subsequent action by BSNL, of acceptance of option for voluntary retirement under the BSNL voluntary retirement scheme 2019, being arbitrary, cannot be sustained and, therefore, the order bearing No.VRS 2019/2200/2214/A/0000000004, dated 03.01.2020 (Annexure-A8) qua the applicant deserves to be quashed.

25. Accordingly, the OA is allowed and the order bearing No.VRS 2019/2200/2214/A/0000000004, dated 03.01.2020 (Annexure-A8) qua the applicant is hereby quashed and set aside. No order as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA No.170/71/2020:

Annexure-A1: DOT OM dtd.29.10.2019
Annexure-A2: BSNL VRS 2019 notification dtd.4.11.2019
Annexure-A3: Online application form for seeking VRS
Annexure-A4: Representation dtd.13.10.2019
Annexure-A5: Representation dtd.23.12.2019
Annexure-A6: Representation dtd.26.12.2019
Annexure-A7: BSNL Corporate office communication dtd.26.12.2019
Annexure-A8: Impugned order dtd.3.1.2020
Annexure-A9: DOT OM dtd.30.9.2000
Annexure-A10: BSNL New Delhi DO communication dtd.3/4.1.2001
Annexure-A11: Govt. of India notification dtd.30.9.2000

Annexures with reply:

Annexure-R1: Circular dtd.24.12.2019
Annexure-R2: Circular dtd.26.12.2019
Annexure-R3: Letter dtd.27.1.2020
Annexure-R4: Order in OA.Nos.38 & 39/2020 of Madras Bench of CAT
Annexure-R5: Order in OA.No.40/2020 of Madras Bench of CAT

Annexures with written arguments filed by the applicant:

-NIL-

Annexures with additional reply:

-NIL-
