CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.111/2020

with

ORIGINAL APPLICATION NO.112/2020

Date of decision: 04.02.2020

CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

(Applicants in OA No.111/2020)

Ashok Chandar Shetye,
Age 57 years, Son of Chandar
Shetye, Working as Sub-Divisional
Engineer, Bharat Sanchar Nigam Ltd.,
Pune, Residing at: House No.825,
Shri Mai Niwas, Parshuram Nagar,
Shivajinahar, Mob.9420050700.

(Applicants in OA No.112/2020)

Patilrao Bhimrao Kolhe,
Age 52 years, Son of Bhimrao Kolhe,
Working as Assistant General Manager,
Bharat Sanchar Nigam Ltd.,
Latur, Residing at: Ganraj Nivas,
Vishal Nagar, Latur-413 512.
Mob: 9422072500,
email: kolhepb@gmail.com

... Applicants.

(By Advocate Shri S. V. Marne)

VERSUS.

(Respondents in OA Nos.111/2020 and 112/2020)

1. The Chairman & Managing Director
Bharat Sanchar Nigam Ltd.,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
H. C. Mathur Lane,
New Delhi-110 001.

2. The Director (HR),
Bharat Sanchar Nigam Ltd.,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
H. C. Mathur Lane,
New Delhi-110 001.

3. Chief General Manager,
Maharashtra Circle,
Bharat Sanchar Nigam Ltd.,
4th Floor, A Wing,
Juhu Road, Santacruz (W),
Mumbai 400 054.

.... **Respondents.**

(By Advocates Shri R. R. Shetty and Shri V. S. Masurkar).

O R D E R (O R A L)

Per: R.N.SINGH, MEMBER (J)

1. When the case is called out, Shri S. V. Marne, learned counsel appeared for the applicants.

2. Shri R. R. Shetty, Ld Senior Central Government Counsel for Union of India (DOT) and Shri V. S. Masurkar, learned counsel appeared for the respondents.

3. In both the aforesaid OAs facts and releifs are also admitted to be identical. Accordingly, with the consent of the parties, the OAs have been heard together and are being disposed of by a common order.

4. These OAs have been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

reliefs in OA No.111/2020 and 112/2020

> "a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the letters dated 24-12-2019, 26-12-2019, and 09-01-2020 with all consequential benefits.
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> b. This Hon'ble Tribunal may further be pleased to hold and declare that the Applicant has validly withdrawn his option for voluntary retirement and that the Applicant would not retire on 31-01-2020 and that he would continue to be employee of Bharat Sanchar Nigam, Ltd. after 31.01.2020 onwards with all consequential benefits.
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> c. Costs of the application be provided for.
>
> d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be

passed."

5. The respondents had floated the BSNL Voluntary Retirement Scheme 2019, based on the decision of the Union Cabinet and this was notified on 04.11.2019 (Annexure A-4) to enable the employees to give their option(s) upto 03.12.2019 during which the employees could submit their applications for Voluntary Retirement including for such applications which they have previously been made. The scheme contemplated the effective date of Voluntary Retirement as 31.01.2020 afternoon for such employees. They were further required to file their options in the ERP/ESS online portal and take a physical printout which was to be signed and submitted to the concerned administrative office of the respondents within three days of the online option.

6. The respondents were required under this scheme to process the Vigilance Clearance and after report of vigilance status the Competent Authority was to decide acceptance of such voluntary retirement applications. The applicants

in the present case filed their applications for Voluntary Retirement within the specified cut off date but for withdrawal of such request after 04.12.2019. The employees were required to file application in physical format because the online station was not available to make such online request. In the CCS Pension Rules, 1972 there is provision for Voluntary Retirement under Rule 48 and Rule 48 (A) which confers on employees the right to withdrawal of their voluntary retirement application before its date of acceptance and the applicants contend that in the present case they had filed their written request before the actual date of acceptance by the respondents albeit such withdrawal was filed on or after 04.12.2019 i.e. well after the final date of such withdrawal i.e. 03.12.2019 as stipulated in the scheme itself.

7. The learned counsels for the respondents have entered appearances on the last date of hearing i.e. on 30.01.2020 an advance service and instruction and have also filed reply affidavit to the OAs.

8. The learned counsels for the respondents have brought to out notice the provisions of para-7 (III) of the aforesaid scheme, 2019 which read as under:

> "(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."

9. The learned counsels for the respondents argue that the scheme is admittedly not under challenge and once the aforesaid scheme provides a particular cut off date for withdrawal of option, there is no reason or occasion to go and examine the provisions of the Rule 48 of CCS Pension Rule 1972 or the relief(s) sought by the the applicants keeping in view the provisions of the CCS Pension Rule, 1972.

10. The learned counsel for the respondents

have also brought to our notice a copy of a common order/judgment dated 27.01.2020 in OA No.210/2020 titled **Sunder Pal and Another Vs. Bharat Sanchar Nigam Limited (BSNL) and Others** with a batch of OAs. Para-9 of such judgment the Principal Bench of this Tribunal has considered the provisions of the Scheme under reference and the para-9 of the such judgment of the Principal Bench of this Tribunal has considered the provisions of the Scheme under reference and the para 9 of such judgment the Principal Bench of this Tribunal has considered the provisions of the scheme under reference and the Para-9 of the judgment reads as under:

> "Clause 7(iii) makes it clear that, an option once exercised, shall be final and the decision of the competent authority shall be binding on the employee. The proviso thereto indicates that the employee shall be entitled to withdraw the option only once at any time, till the closing time and date of option, i.e. 03.12.2019 upto 05:30 p.m."

11. In the said order dated 27.01.2020 after relying upon the judgment of the Hon'ble Apex

court in a **State Bank of Patiala Vs. Romesh Chander Kanoji, reported in (2004) 2 SCC 651** and **Madhya Pradesh State Road Transport Corporation Vs. Manoj Kumar and Anr, reported in (2016) 9 SCC 375**, this Tribunal in para 12 to 17 has ordered as under:

> 12. Specially framed Schemes for the purpose of reducing the financial burden on the organizations like the BSNL, however, stand on a different footing. The intention is to rationalize the workforce and options are invited from the employees. Depending upon the response to the Scheme, the organizations are required to make financial arrangements from banks or other resources, so that the benefits that are required to be paid, are worked out. This very issue fell for consideration before the Hon'ble Supreme Court in State Bank of Patiala versus Romesh Chander Kanoji, (2004) 2 SCC 651. After dealing with the various aspects of the Scheme that was introduced by the Bank, the Hon'ble Supreme Court observed as under:
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> *"9. We do not find any merit in the above argument. It is important to bear in mind that the Schemes in question are basically funded schemes. Under such Schemes, time is given to every employee to opt for voluntary retirement and OA No-210/2020 and batch similarly time is given to the management to work out the Scheme. Clause (5) of SBPVRS gave fifteen days' time to the employees to opt for the*

Scheme and under clause (8) a period of two months is given to the management to work out the Scheme. Since the said Schemes are funded schemes, the management is required to create a fund. The creation of the fund would depend upon the number of applications; the cost of the Scheme; liability which the Scheme would impose on the Bank and such other variable factors. If the employees are allowed to withdraw from the Scheme at any time after its closure, it would not be possible to work out the Scheme as all calculations of the management would fail. In the case of Bank of India v. O.P. Swarnakar SBIVRS is held to be an invitation to offer. Following the said judgment, we hold that SBPVRS is an invitation to offer and not an offer. Clause (5) of the said SBPVRS inter alia states that the Scheme will remain open during the period 15-2- 2001 to 1-3-2001 whereas Rule 8 thereof provides for mode of acceptance by the management. It is in the light of Rules 5 and 8 that one has to read clause (9)(i) which provides for general conditions and under which it is provided that application once made cannot be withdrawn. In Chitty on Contracts (28th Edn., p. 125), the learned author states that:

'an offer may be withdrawn at any time before it is accepted. That this rule applies even though the offeror has promised to keep the offer open for a specified time, for such a promise is unsupported by consideration'."

13. This was followed in ***Madhya Pradesh State Road Transport Corporation versus Manoj Kumar and Anr.***, (2016) 9 SCC 375.

Para 29 and 30 are relevant and they read as under:

(29)

"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 Contract 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 OA No-210/2020 and batch 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 rational 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.

30. In the present case, the Corporation had floated the Scheme because of the reason that it has virtually stopped transport business and the purpose of the Scheme was to benefit itself by shrinking the strength of the employees as with no transport business need for such employees is not there. Here also, the Scheme provided that once the option is given, the same cannot be withdrawn. Following the dicta in the aforesaid judgments, as noted above, it is clear that notwithstanding this clause, the employees had a right to withdraw the offer during the validity period but not thereafter. This legal principle is even taken note of by the High Court as well in the impugned judgment. The High Court has, however, held that though the Scheme was valid up to 1-8-2005, but validity was extended up to 31-7-2007, the employees could withdraw their offers before 31-7- 2007. Further, as in all these cases where the offer was withdrawn before 31-7-2007, the High Court has dismissed the appeals of the Corporation herein."

14. Ultimately, the Hon'ble Supreme Court repelled the contention that the request for VRS can be withdrawn, even after the date stipulated under the Scheme, and till the request is accepted. We find that the Scheme introduced by BSNL is similar, if not identical, to the one that was introduced by State Bank of Patiala and

Madhya Pradesh State Road Transport Corporation, and the same consequences must flow in this case also.

15. In OA No. 233/2020, the applicant contends that the respondents came forward with a clarification on 08.01.2020, throwing light upon the nature of benefit, and had that been issued along with the scheme, he would not have exercised that option at all. On this basis, he wants to withdraw the option. We find it difficult to treat this as a ground, to find fault with the Scheme or to permit the applicant to withdraw the option at this stage. In case, the applicant is of the view that the letter dated 08.01.2020 is violative of any rights vested to him, it shall be open to him to work out his remedies.

16. An argument is advanced that, in case, BSNL requires any workforce in the category of the posts, which hitherto were held by the applicants, they may be given an opportunity to serve the respondents, on whatever terms. We cannot make any final pronouncement in this behalf. However, this much can be said that, in case, BSNL needs any workforce of that nature, it would be in their interest, to avail the services of its own former employees.

17. We do not find any merit in the OAs and accordingly, they are dismissed. There shall be no order as to costs."

12. The case in hand is identical to the batch of cases decided by the Principal Bench vide

common order dated 27.01.2020, referred to above.

13. In view of the aforesaid, we find these OAs to be devoid of any merit. Accordingly, these OAs are dismissed. However, no order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

16/03/2020