



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
ARISING OUT OF SLP (C) NO. 21390 OF 2024

ABDUR RAHMAN

...APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

J U D G M E N T

1. Leave granted.
2. The present appeal has been filed against the judgment of the High Court¹ confirming the order of the Central Administrative Tribunal² upholding Central Government's rejection of the appellant's request for Voluntary Retirement from Service ("VRS").

I. Facts

3. The appellant is an Indian Police Service ("IPS") officer belonging to the 1997 Batch, Maharashtra cadre. On 22.07.2014, one Tukaram Bhimrao Jadhav filed a complaint (Complaint I) against the appellant for torturing the

¹ Dated 23.07.2024 in Civil Writ Petition No. 1018/2024.

² Dated 07.12.2023 in Original Application No. 758/2019.

complainant's wife. On 28.04.2016, the appellant's father-in-law filed a complaint (Complaint II) against him for allegedly contracting a second marriage without consent of first wife and for torturing his first wife and son. On 29.03.2019, the appellant gave a speech at the launch event of his book titled "Denial and Deprivation", and an enquiry was initiated against him for violation of Rules 6 and 7 of the All India Service (Conduct) Rules 1968 ("Conduct Rules") (Complaint III). It is in this background that he tendered a notice dated 01.08.2019 for VRS under Rule 16(2A) of the All India Service (Death-cum-Retirement Benefits) Rules, 1958 ("1958 Rules").

4. It is also necessary to indicate that he had made two such VRS applications prior to the present application. The first application was withdrawn by him to seek remedies for promotional avenues before the Central Administrative Tribunal ("CAT"), while the second application was rejected by the Ministry of Home Affairs ("MoHA") on the ground that the appellant was not clear from vigilance angle as there were disciplinary proceedings pending against him for violations under the Right to Information Act, 2005. It is only after the closure of those disciplinary proceedings under the RTI Act, that the appellant filed the present application for VRS dated 01.08.2019.

5. On 16.10.2019, the State Government considered his application, and upon its satisfaction that none of the three complaints pending against the appellant at that time, as mentioned earlier, would likely result in a major penalty, recommended that the appellant's VRS notice be accepted by the Central Government. The relevant portion of the recommendation is extracted for ready reference –

“After observing & scrutinizing the above 3 cases, it seen that the Charge Sheet is not issued in any case & disciplinary proceedings are only contemplated. Also it seems to be no major penalty will be imposed on the Officer in all above cases.

Hence as per the guidelines issued by DOPT about provisions for DCRB rule, 1985 rule 16(2a), the notice of voluntary retirement given by Shri. Abdur Rahman, IPS, may be accepted.”

6. However, on 25.10.2019, and this is where the crux of the dispute lies, the Central Government came to the conclusion that there are still disciplinary proceedings “pending or being contemplated” against the appellant, and as such, his notice seeking VRS was rejected. The relevant portion of the Central Government's rejection letter is extracted hereinbelow-

“2. In this connection, it is stated that earlier the State Government had also forwarded voluntary retirement request submitted by the said MoS to this Ministry, which has not acceded to on the ground that the MoS was not clear from vigilance angle and disciplinary proceedings were pending/contemplated against him. Now the disciplinary proceedings against the MoS, as reported by the State Government are pending or being contemplated. Accordingly, he is not clear from the vigilance angle.

3. In view of the above, after having considering the matter, the competent authority has not acceded to the request of voluntary retirement of the MoS.”

7. Aggrieved by the rejection, the appellant filed an Original Application (OA) at the CAT on 06.11.2019 with the following prayers –

“a) This Hon'ble Tribunal may be pleased to call for the record of the case which led to the passing of the impugned Order dated 25.10.2019 i.e. Annexure “A1” and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

(b) This Hon'ble Tribunal may be pleased to hold and declare that the Applicant stood effectively retired w.e.f. 31.10.2019 or on any other relevant date and accordingly direct the Respondents to release all the retiral dues to the Applicant forthwith.

(c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(d) Costs of this Original Application may be provided for.”

8. Meanwhile, the complaints and enquiry initiated against the appellant culminated into chargesheets issued by the State Government on 17.06.2020, 06.10.2020 and 24.04.2022. Relevant details of said chargesheets are as follows:

(i) **Chargesheet I** dated 17.06.2020 – Issued for major penalty in relation to complaint by appellant's father-in-law. The appellant had contracted a second marriage during subsistence of his first marriage while he was serving as a Deputy Inspector General of Police, Economic Offences

Wing, State Criminal Investigation Department, and had therefore violated Rule 3 and 19(2) of the Conduct Rules.

(ii) **Chargesheet II** dated 06.10.2020 for minor penalty in relation to alleged violation of Conduct Rules by the appellant for giving a speech at his book launch event on 29.03.2019. The State Government subsequently decided to convert said departmental enquiry from minor penalty to major penalty.

(iii) **Chargesheet III** dated 24.04.2022 for major penalty in relation to alleged misconduct of not attending to duties on and from 12.12.2019 after filing the Original Application, in absence of any interim relief by the CAT; publishing information of tendering an application for voluntary retirement on social media; registering protest against enactment of the Citizenship (Amendment) Act, 2019 (“CAA”) on social media as well as physically participating in protests; and, registering protest against police action on social media.

9. On 07.12.2023, the CAT dismissed appellant’s OA by holding that there were complaints pending and in contemplation against appellant at the time when he submitted his VRS notice and consequently, upheld Order dated 25.10.2019. The relevant portion of the CAT’s Order is reproduced below –

“10. ...Complaints against the officer were pending under consideration is an admitted position. Once the complaints are admitted to have been pending on the date when the request for voluntary retirement was made and no final decision had been taken by the respective Government to drop the said complaint then it cannot be said that the said complaints had stopped being under contemplation or had resulted in no decision. The very fact that the same State Government has issued 2 separate charge-memorandum under Rule 8 of All India Services Disciplinary Rules, for major penalty would show that the complaints against the applicant were under contemplation at the relevant time.

11. The letter dated 16.10.2019 has pointed out to the nature of the complaints which were pending against the applicant. One of such complaint was with respect to the alleged 2nd marriage solemnized by the applicant without consent of his first wife and for abusing and torturing the first wife and son in this regard. The conduct rules which are governing the Government servants do not allow solemnization of 2nd marriage without divorce from the first wife or when she is living. Such misconduct is a serious violation of the Conduct Rules and, therefore, if the same is proved it may culminate in major penalty. We do not wish to comment any further on the inquiries which are pending, however the same are pending under Rule 8 of the rules which is pertaining to major penalty. Contemplation on the complaints would require the Competent Authority to contemplate whether the complaint is to be dropped or whether the Proceedings is to be initiated. Such contemplation would also inherently include with it the possibility of imposition of the major penalty of removal or dismissal. The contemplation on misconduct/complaint cannot be done in parts.

12. We find it odd that State Government in its letter dated 16.10.2019 had stated that the disciplinary proceedings are under contemplation and also that they are not likely to result in removal and dismissal. In our considered opinion both the stages cannot exist simultaneously. If the complaints had been contemplated upon then the disciplinary authorities would have arrived at some conclusion. Subsequent events have demonstrated that disciplinary authority ultimately decided to hold enquiry into the alleged misconduct of the applicant. Meaning thereby that at the relevant time the complaints were pending contemplation. Therefore, the impugned order dated 25.10.2019 cannot be faulted with.”

10. Aggrieved by CAT's Order, appellant approached the High Court vide a Writ Petition with identical prayers. The Impugned Order of the High Court, dated 23.07.2024, dismissed this Writ Petition and the decision of the Central Government to not accept the recommendation of the State Government in appellant's case was held to be well within the contours of Rule 16(2A) of the 1958 Rules read with Guidelines on VRS by the Department of Personnel and Training ("DoPT Guidelines") dated 16.10.1980. It was held that the Central Government is the ultimate authority concerning any manner of severance of the employer-employee relationship, including those following request by a member of service for VRS. The word "acceptance" in first proviso to Rule 16(2A) cannot be construed as merely *automatic* or *ministerial*, for Central Government's acceptance is necessary for an officer to voluntarily retire from service. The High Court was also of the view that the Central Government is bound to apply its mind to all relevant facts and circumstances when a proposal is put forth by a State Government regarding an officer's prayer for VRS. Relevant excerpts from the impugned judgement on the authority of the Central Government are as follows-

"26. Thus, if the aforementioned provisions of various Rules and Regulations are kept in mind, we are unable to agree with the submission made by learned senior advocate for the petitioner that the phrase "acceptance" occurring in the first proviso to Rule 16(2A) of the 1958 Rules has to be construed only to mean that it is incumbent upon the Central Government to accept the

proposal made by the Central Government on a prayer made by the member of Indian Police Service seeking voluntary retirement. If severance of employee-employer relationship in case of punishment or dismissal, removal or compulsory retirement takes place under an order to be passed by the Central Government, in our opinion, the voluntary retirement, which also ultimately results in severance of relationship between the employee and employer, has to be in terms of an informed decision to be taken by the Central Government.

27. The submission, thus, of Mr. Shaikh that "acceptance" cannot be equated with "approval" in case of voluntary retirement sought by a member of Indian Police Service, is highly misplaced. In our considered opinion, when a proposal on the prayer made by a member of Indian Police Service seeking voluntary retirement is made by the State Government, the Central Government has to apply its mind to all the relevant factors and materials and the attending circumstances to arrive at a conclusion whether or not to accede to such a prayer made by the officer concerned. The act of "acceptance" as required by the first proviso appended to Rule 16(2A) of the 1958 Rules does not, in our opinion, mean performance of a ministerial act and therefore, "acceptance" by the Central Government of the proposal of the State Government cannot be a routine function of the Central Government.

29. We are unable to find ourselves in agreement with the said submission made on behalf of the petitioner for the reason that even if the State Government may have formed the opinion that the departmental proceedings contemplated against the petitioner would not warrant either of the major penalties, the Central Government will be well within its authority and power under the proviso appended to Rule 16(2A) of the 1958 Rules to form its own opinion as to whether the disciplinary proceedings pending/contemplated, would or would not result in a major penalty. Merely because, in the opinion of the State Government, the departmental proceedings which were contemplated against the petitioner at the relevant point of time would not have warranted major penalty, will not suffice for the purposes of arriving at the decision whether to accept or not the prayer made by the petitioner seeking voluntary retirement.

35. Thus, we unhesitatingly hold that in the instant case, by not accepting the recommendation of the State Government's proposal contained in the letter dated 16th October 2019, the Central Government has acted well within its authority available to it under the first proviso to Rule 16(2A) of the 1958 Rules. Even

otherwise, the proposal contained in the letter of the State Government dated 16th October 2019 cannot be construed to be a recommendation made by the State Government for accepting the prayer for voluntary retirement made by the petitioner. The said letter is only a proposal where the State Government has given certain details and its opinion that the departmental proceedings, which were contemplated against the petitioner at the relevant point of time, may not result in either of the major penalties. The Central Government, however, is not bound by such an opinion formed by the State Government, otherwise, the proviso appended to Rule 16(2A) of the 1958 Rules will be rendered otiose, where the Central Government is the final authority to accept the notice of retirement tendered by the officer concerned.

36. In view of the foregoing discussions, we are of the unambiguous opinion that the function assigned to the Central Government under the proviso appended to Rule 16(2A) of the 1958 Rules cannot be construed to mean as a routine exercise; rather, the Central Government is required to consider the entire material available before it and thereafter take a conscious and well-informed decision based on relevant considerations for accepting or refusing to accept the notice of voluntary retirement given by a member of Indian Police Service.”

11. While refraining from expressing an opinion on whether or not the pending proceedings will amount to major or minor penalties against the appellant, High Court held that the three chargesheets pertain to alleged misconducts on part of the appellant prior to the filing of application for VRS and thus, at the relevant point departmental proceedings were *contemplated* against him. The relevant portions of the impugned judgement are as follows –

“37. As regards the issue (c) mentioned above in paragraph 18, it is to be noted that admittedly, there are three charge-sheets which have presently been issued against the petitioner. The first charge-sheet is dated 17th June 2020, the second charge-sheet

is dated 6th October, 2020 and the third charge-sheet is dated 24th February, 2022. The said charge-sheets are on record. The first charge-sheet dated 17th June 2020 contains two articles of charges. The first article of charge states that the petitioner, while working as Deputy Inspector General of Police, Economic Offences Wing, State Criminal Investigation Department contracted second marriage during subsistence of the first marriage while his first spouse was alive and not divorced and, thus, he violated Rule 19(2) of the All India Service (Conduct) Rules, 1968. The second charge in the charge-sheet dated 17th June 2020 is that the petitioner, while posted as Deputy Inspector General of Police, has been mentally and physically harassing, abusing and assaulting his first wife and children and compelling them to accept his second marriage. As to whether such charges may warrant minor or major penalty has to be left for consideration of the Disciplinary/Appointing Authority. It is not the function of this Court at this juncture to pre-judge the issue, however, we may note that in respect of the charges contained in the charge sheet dated 17th June 2020, the State Government was having enough material to contemplate the disciplinary proceedings and it is for the competent authority to opine as to whether the charge-sheet would result in either of the major penalties. Though we refrain from expressing our opinion as to whether the charge-sheet dated 17th June 2020 may warrant either of the major penalties, however, reference may be made to a judgment dated 19th March, 2021 rendered by a Division Bench of Delhi High Court in Writ Petition (C) No. 3613 of 2021 in the case of State of Rajasthan & Anr. vs. Pankaj Kumar Chaudhary & Ors. In the said judgment, it has been observed that ethical standards of an act of bigamy cannot always, whatever the facts may be, lead to maximum punishment of dismissal/removal of Government servant from service. Thus, an act of bigamy indulged into by a Government employee, if is subject-matter of disciplinary proceedings, may lead to maximum punishment of dismissal or removal or may not result in maximum punishment. Opinion in this regard has to be formed by the competent authority and therefore, we refrain ourselves from giving any such finding on the issue as to whether the charges on the basis of which the disciplinary proceedings were contemplated against the petitioner at the relevant point of time would or would not result in any of the major penalties.

38. We may, nonetheless, notice a judgment of Hon'ble Supreme Court in the case of Khursheed Ahmad Khan vs. State of Uttar Pradesh & Ors, reported in (2015) 8 SCC 439, wherein the penalty of removal inflicted on the employee concerned, based

on the charge of contracting second marriage during existence of the first marriage without permission of the Government, was not interfered with.

39. The second charge-sheet is dated 6th October 2020, however, the incident in respect of which the said charge-sheet has been issued relates to a function held on 29th March 2019, accordingly, the charge relates to a date prior to the date when the petitioner had tendered the application seeking voluntary retirement. Accordingly, at the relevant point of time, in respect of the charges mentioned in the charge-sheet dated 6th October 2020, departmental proceedings were contemplated against the petitioner.

40. Regarding the third charge-sheet, issued on 24th February 2022, it is to be noticed that the said charge-sheet also contains a charge in respect of the alleged misconduct against the petitioner concerning some speech delivered by him in a function held on 29th March, 2019. Thus, this charge also relates to the period prior to the date on which the petitioner had tendered the application seeking voluntary retirement. As observed above, as to whether such a charge would entail either of the major or minor penalties, has to be left to the competent authority and it is not for the Court to pre-judge any such issue.”

II. Submissions of the Parties

12. Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of the appellant made the following submissions -

i. Mr. Ahmadi commenced with an alternative submission that instead of examining the legality of the decision taken by the Government on the basis of the Rules, the appellant could be permitted to take voluntary retirement subject to the conduct and conclusion of disciplinary proceedings. He would suggest that this course of action can be adopted by exercising

extraordinary jurisdiction under Article 142 of the Constitution as done in the case of *Ashok Kumar Sahu v. Union of India*³.

ii. On the merits of the matter, it is submitted that under Guideline 3(ii) of the DoPT Guidelines on VRS, the State Government has the final and determinative say on whether any disciplinary proceedings, which are pending or contemplated, may warrant a major penalty of dismissal or removal. He supported this submission by relying on State Government's letter dated 16.10.2019 to the Central Government, wherein it recommended appellant's application for VRS be accepted by noting that the disciplinary proceedings may not lead to the imposition of a major penalty. He would therefore submit that once the State Government, being the disciplinary authority, expressed its considered opinion, the Central Government was bound to accept that assessment and it could not have independently substituted the State Government's opinion with its own.

iii. Alternatively, even if it is held that the Central Government has such discretion, on the relevant date for consideration, that is, when appellant applied for VRS on 01.08.2019, the conditions precedent for its exercise of discretionary power under Guideline 3(ii) of the DoPT Guidelines,

³ (2006) 6 SCC 704.

i.e, existence of disciplinary proceedings which are *pending* or *contemplated*, are not met. On that date, there was no formal chargesheet served upon the appellant, and none of the three complaints progressed to a stage where proceedings were genuinely *contemplated* within the meaning of Guideline 3(ii). He relied on *State of Haryana v. Dinesh Singh*⁴, to say that mere pendency of a complaint, without any concrete steps towards initiating proceedings, does not amount to ‘contemplation’.

iv. The Central Government Order dated 25.10.2019 suffers from non-application of mind as it does not engage with the State Government’s opinion that no major penalty was likely and also does not pay mind to actual statutory criteria stated hereinabove.

v. By the time the VRS application on 01.08.2019 was made, nothing remained to prevent the Central Government from approving appellant’s VRS application. The State Government already cleared the appellant’s case and took the view that no major penalty may be imposed in pending disciplinary proceedings against him.

13. Ms. Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the Union of India made the following submissions -

⁴ (2024) 13 SCC 357, 31-33.

i. Rule 2(b) of the All India Services (Discipline and Appeal) Rules, 1969 defines 'disciplinary authority' as the authority competent to impose penalties under Rule 6. Rule 7(2) of the same Rules provides that penalty of dismissal, removal from service, or compulsory retirement shall not be imposed upon a member of an All India Service except by an order of the Central Government. Owing to Rule 7(2), the Central Government alone is the disciplinary authority for the purpose of imposing major penalties on IPS officers.

ii. In the same vein, the word 'acceptance' in the first proviso of Rule 16(2A) of 1958 Rules cannot be construed as an automatic act. Owing to the fact that Central Government is the competent authority for severance by way of punishment, it must exercise genuine discretion, and as such, is also the disciplinary authority under Guideline 3(ii). Since Central Government is the ultimate authority to impose major penalties under Rule 7(2), it would be anomalous, she would submit to hold that the Central Government will be bound by the State Government's opinion on whether such a penalty would be warranted.

iii. According to her, the relevant date of consideration by Central Government for when proceedings are pending or contemplated has to be the date on which the Central Government considered the application, and

not the date on which the application for VRS is made. Contemplation, as per *Dinesh Singh* (supra), means any period of time before the formal filing of chargesheet. As on 25.10.2019, she would submit, proceedings were in fact genuinely contemplated against the appellant.

iv. *Ashok Kumar Sahu* (supra) can be distinguished on the circumstances of that case, which was in the context of a withdrawal by a VRS applicant after VRS was already approved, but not communicated to the applicant.

14. Mr. Shrirang Varma, learned counsel appearing for the State of Maharashtra adopted the submissions made by Ms. Bhati and specifically stated that the State Government has no role to form an opinion under Rule 16(2A), and is merely a forwarding authority. Upon a question being put to him about the cause of the delay in issuing chargesheets, Mr. Varma has submitted that such delay was due to unavailability of witness statements.

III. Analysis

Re: Scope of Central Government's power under Rule 16(2A) of the 1958 Rules read with Guideline 3(ii) of 1980 Guidelines

15. In order to conclusively adjudicate the *lis* between the parties, it is necessary to ascertain the scope and ambit of the Central Government's power in accepting VRS notices under Rule 16 of the 1958 Rules. This rule

provides for entitlement of an All India Service Officer to gratuity or pension upon superannuation. Rule 16(1) speaks about retirement through superannuation when an Officer turns sixty. Rule 16(2) speaks about VRS and entitles officers to retirement after 30 years of service or on attaining fifty years of age. Rule 16(2A), being the rule relevant for our purpose, specially entitles an officer to voluntarily retire after completing 20 years of service by issuing notice to the State Government. Relevant portion of the Rule is reproduced below for ready reference -

“1958 Rules

Rule 16. Superannuation gratuity or pension –

(1)...

(2)...

(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 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 Central 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):*

Provided further that a member of the Service, who is on deputation to a corporation or company wholly or substantially owned or controlled by the government or to a body controlled or financed by the Government, shall not be eligible to retire from the service under this rule for getting himself permanently absorbed in such corporation, company or body.

Provided also that a member of the Service borne on the Cadres of Assam-Meghalaya, Manipur-Tripura, Nagaland and Sikkim may retire from service on the date on which he/she completes 15 years of service.”

(emphasis supplied)

16. It is evident from the above that a notice for voluntary retirement will be valid only when it is accepted by the Central Government. The process by which the Central Government accepts the notice for voluntary retirement coupled with the considerations that should weigh are provided in the DoPT Guidelines. Guideline 3, laying down the process for acceptance is as follows-

"Guideline 3: Guidelines for acceptance of notice of voluntary retirement: -

For acceptance of the notice of retirement under sub-rule(2) and (2A) of Rule 16 of the All India Service (Death-cum-retirement Benefits) Rules, 1958, the following guidelines are laid down:-

...

*ii) In cases where disciplinary proceedings **are pending or contemplated** against a member of the **Service for the imposition of a major penalty** and the **disciplinary authority** having regard to the circumstances of the case, is of the view that the imposition of the major penalty of removal or dismissal for service would be warranted, the notice of voluntary retirement given by the officer concerned **may not ordinarily be accepted.***

..."

17. The words '*may not ordinarily be accepted*' in Paragraph (ii) of the Guidelines is intended to vest in the Government the discretionary power of acceptance or rejection of the notice depending on the facts in which an employee is situated. Before exercising such a discretion, the Guideline contemplates existence of disciplinary proceedings – either pending or contemplated against the member of the service. Further, the Government has to take into account the opinion of the disciplinary authority as regards

the possibility of imposition of major penalty for removal or dismissal from service. Therefore, having regard to the pending disciplinary proceedings, coupled with the opinion of the disciplinary authority, the Government will exercise its power and duty under proviso to Rule 16(2A) to accept or reject application for VRS. It is important to note that the discretion vested in the Central Government to finally accept or reject the application is to be exercised on an independent assessment, and that is the reason for the Guideline clarifying that the view of the disciplinary authority may or may not ordinarily be accepted. This would also mean that the Central Government under proviso to Rule 16(2A) would take its independent decision even in a case where the State Government is of the view that the disciplinary proceedings could warrant imposition of major penalty of removal and dismissal. We are of the opinion that the Rule contemplates exercise of power with responsibility to ensure good governance, balancing discipline with freedom of employee and fairness in action.

18. We are not in agreement with Mr. Ahmadi's submission that the Central Government could not have taken a different view once the State Government forwarded its recommendation that *no major penalty will be imposed on the officer* in its communication dated 16.10.2019. Such an inference would render proviso to Rule 16(2A) meaningless. The Rule

specifically empowers the Central Government to take the final decision of acceptance of a notice of VRS by a member of the service. It is interesting to note that prior to its amendment with effect from 01.07.1998, the Rule 16(2A) proviso was worded differently.⁵ After the amendment, a notice for VRS by a member of the service the proviso specifically requires acceptance of the Central Government.

19. The All India Services contemplated under Article 312 of the Constitution came into existence with the enactment of the All India Services Act, 1951. This Act, coupled with subordinate legislations made thereunder, touch upon various facets of the service such as recruitment, cadre allocation, pay and allowance, leave, pension, promotions, dismissal, removal, suspension, compulsory or voluntary retirement and retirement benefits. There is, therefore, no gainsaying about the position of the operation of the Rule that a request for VRS by a member of the service mandatorily requires acceptance of the Central Government.

⁵ “16. (2-A) 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):”

20. In *Ashok Kumar Sahu* (supra) this Court examined Rule 16(2A) in detail including amendment to the proviso that was brought about by notification dated 01.07.1988. The relevant portion of this Court's judgment is as under-

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

"16. (2-A) 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):"

13. 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—

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

14. 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 record, 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 (2-A) 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.

16. When the 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 eye of the law. It is coram non judice.

18. 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 v. Amar Singh Harika)”

21. Thus, the voluntary severance of employee-employer relationship pursuant to a VRS notice requires Central Government’s acceptance and it would also require a considered decision of the Central Government. It would be incongruous to suggest that this VRS could take effect without any genuine and a well considered exercise of discretion by the Central Government. The scheme of the extant rules governing the All-India

Services consistently treats the Central Government as the repository of ultimate authority over career-terminating decisions concerning IPS officers, and ‘*acceptance*’ of VRS must be consistently read with that scheme. To this extent, we hold that the Central Government has the last word when deciding a request for VRS under Rule 16(2A) of the 1958 Rules and in doing so, it is not bound by the recommendation of the State Government. We also make it clear that this power is not unconstrained and is qualified. Exercise of discretion by the Central Government under proviso to Rule 16(2A) is guided by Guideline 3(ii) of the DoPT Guidelines. Incorporation of discretion in the rule is deliberate and intended to guide exercise of power. When disciplinary proceedings are pending or contemplated against a member of the service for imposition of a major penalty, the request for VRS “may not *ordinarily* be accepted”. Phrasing of the guideline accords the Central Government the vital discretion to apply its mind on case to case basis and in a given case it may accept the notice of the officer for VRS despite the possibility of imposition of a major penalty.

22. The Central Government cannot form an opinion which is not supported by material on record. Though not bound by the recommendation of the State Government, its opinion does carry weight and persuasive value owing to the fact that it is the authority with direct supervisory knowledge of

the officer serving in connection with affairs of that State and under whose authority any disciplinary proceedings are to be conducted.⁶ Even *Ashok Kumar Sahu* (supra) notes that such order passed by the *competent authority* needs application of mind. Thus, exercise of discretionary power in accepting or rejecting a request for VRS cannot be without engagement with views expressed by the State Government.

Re: Whether the Central Government was justified in rejecting VRS in the facts and circumstances of the present case?

23. In light of the above discussion, in order for the Central Government to validly exercise its discretionary power under proviso Rule 16(2A) read with Guideline 3(ii) of the DoPT Guidelines to reject appellant's VRS notice, it must first be shown that disciplinary proceedings were *pending or contemplated* against a member of the service which could culminate into a *major penalty*. A disciplinary proceeding is pending only when a formal chargesheet is issued.⁷ As on 25.10.2019, the date on which the Central

⁶ Rule 2(c)(i) read with Rule 7(1)(b) of the 1969 Rules.

⁷ *Union of India v. K.V. Jankiraman*, (1991) 4 SCC 109

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point..."

Government rejected the appellant's VRS Notice, no chargesheet had been served upon the appellant. No disciplinary proceedings were therefore *pending* against him.

24. Now the question is as to whether any proceedings were *contemplated* against the appellant as on 25.10.2019. 'Contemplation' in the present context connotes a deliberate intention to act on a complaint, instead of a mere existence of a pending complaint.⁸ That is, it is to be seen whether there exists a possibility or a contingency that a formal departmental proceedings may follow a given complaint, in order to arrive at a conclusion as to 'contemplation'.⁹

25. In order to appreciate whether disciplinary proceedings were *contemplated* against the appellant it is necessary to review the position that existed as on 25.10.2019. No action was taken regarding **Complaint I** dated 22.07.2014 by Tukaram Bhimrao Jadhav by the time the Central Government considered appellant's request for VRS on 25.10.2019. This complaint remained inconclusive as on 25.10.2019. **Complaint II** dated 28.04.2016 by appellant's father in law stood withdrawn by the complainant by 22.09.2017 itself i.e. more than two years before the Central Government

⁸ *State of Haryana* (supra).

⁹ *State of UP v. Jai Singh Dixit*, 1974 SCC OnLine All 240, para 35, 39-41.

took its decision on 25.10.2019. As regards **Complaint III**, arising out of enquiry initiated against the appellant for making a speech at his book launch event on 29.03.2019, the State Government in its recommendation letter dated 16.10.2019 to the MoHA stated that a detailed inquiry report with a draft chargesheet was awaited from the Directorate General of Police, Mumbai. However, it was also of the opinion that the complaint is unlikely to result in imposition of a major penalty against the appellant.

26. A comprehensive view of the complaints existing as on the relevant date would indicate that out of the three complaints, only **Complaint III** can validly be said to be in *contemplation* of the disciplinary authority at that time. Under these circumstances, the decision and order of the Central Government in rejecting the notice for voluntary retirement on the ground that the appellant was not clear from a vigilance angle suffers from non-application of mind. Further, the Central Government did not engage with the State Government's opinion in its letter dated 16.10.2019 and the material considered therein, so as to justify the departure from the recommendation to permit the appellant to voluntarily retire from service.

27. In light of the above analysis, decision of the Central Government dated 25.10.2019 is liable to be set aside on ground that there is no proper

application of mind and the issue relating to acceptance or rejection of appellant's VRS notice necessarily requires a thorough reconsideration.

28. The story does not stop here. In the meanwhile, much has happened after the rejection order dated 25.10.2019, and we will be remiss if we do not account for the subsequent developments. During the pendency of appellant's Original Application before the CAT, three chargesheets came to be issued. The **Chargesheet I** (major penalty for contracting second marriage) was issued on 17.06.2020, that is ten months after appellant applied for VRS on 01.08.2019 and four years after the original complaint was filed on 28.04.2016 and nearly three years after the complainant withdrew his complaint on 22.09.2017. **Chargesheet II** (minor penalty for speech at book launch event) was issued on 06.10.2020, eighteen months after the event held on 29.03.2019. **Chargesheet III** (major penalty for protests against Citizenship (Amendment) Act and absence from duty) was issued on 24.02.2022 nearly two and a half years after appellant filed his Original Application before the CAT. The State Government has been indifferent and seems unconcerned about concluding the enquiry.

29. Apart from the above delay in issuance of chargesheets, further action of the State Government is marred with similar tardiness. Inquiry officers have been appointed only in 2024 in Chargesheet I with a delay of four years,

and in Chargesheet III with a delay of two years. No such appointment has been made for purposes of Chargesheet II yet, despite the passage of five years. The appellant has received summons to attend preliminary hearing in 2025 for Chargesheet I issued in 2020 and in 2026 for Chargesheet III issued in 2022. Though Mr. Shrirang Varma, learned counsel for the State Government, with usual fairness brought to our notice all the facts of the case, we are of the opinion that the method and manner of conducting disciplinary proceedings is unacceptable.

30. Thus, the inchoate proceedings initiated with the three complaints, that fell for consideration before the Central Government as on 25.10.2019, acquired a new dimension on account of the long and unjustified delay in conclusion of the disciplinary proceedings without any result. In *State of AP v. N. Radhakishan*¹⁰, this Court held that unexplained delay in conclusion of disciplinary proceedings is itself an indication of prejudice against an officer—

“19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The

¹⁰ (1998) 4 SCC 154.

delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

31. The facts and circumstances as indicated hereinabove demonstrate that a lot of water has passed since filing of the first complaint in 2014 and also since the first chargesheet issued in 2020, yet the process is far from reaching a conclusive finding. When we enquired from the learned counsel for the appellant as to whether the long and inconclusive delay in the disciplinary proceedings was ever challenged, we were informed that no such remedy was adopted. It is suggested that this Court could exercise its jurisdiction under Article 142 of the Constitution, as done in the case of *Ashok Kumar Sahu* (supra). The facts in the case of *Ashok Kumar Sahu* (supra) are completely different and did not relate to a case of disciplinary proceedings,

but were concerned with an attempt to withdraw an application for VRS after it was already accepted. It is in that context, having upheld the exclusive power of the Central Government to accept a notice for VRS, the Court passed orders under Article 142 by not reinstating the applicant in service but permitting him to voluntarily retire with benefits. Returning to the facts of the present case, while it may not be a case under Article 142, we leave it open to the appellant to avail such remedies as may be available to him in law.

IV. Conclusion and Relief

32. In view of the above discussion and analysis, we are of the opinion that the Central Government has not examined the complaints in detail before taking the decision dated 25.10.2019 of not accepting the notice for VRS. Further, in view of the subsequent developments where chargesheets dated 17.06.2020, 06.10.2020 and 24.04.2022, were issued but the State Government has been unable to conclude the disciplinary proceedings, the Central Government must revisit its decision dated 25.10.2019 and examine the notice for voluntary retirement afresh.

33. In view of the above, we allow the appeal against the judgment and order of the High Court in Civil Writ Petition No. 1018/2024 dated 23.07.2024, set aside the order dated 25.10.2019, and direct MoHA to take into account

the facts and circumstances as indicated hereinabove and pass appropriate orders under proviso to Rule 16(2A) on the application for VRS by the appellant. Needless to say, against the order that may be passed by the MoHA under proviso to Rule 16(2A), if necessary and if so advised, the appellant may be entitled to avail such remedies as may be available in law, including invocation of jurisdiction of the CAT.

34. We further direct that the decision in this regard shall be taken within a period of three months from today.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
MAY 26, 2026.**