

**SUPREME COURT OF INDIA**

Chairman & M.D., Indian Overseas

Vs.

Tribhuvan Nath Srivastava

C.A.No.1186 of 2005

(Aftab Alam and R.M.Lodha,JJ.,)

04.02.2011

**JUDGMENT**

**Aftab Alam,J.,**

1. This appeal by special leave is directed against the judgment and order dated September 3, 2003 passed by a division bench of the Allahabad High Court on a writ petition (Civil Miscellaneous Writ Petition No.6162 of 2003) filed by the respondent who was at that time working as an officer in the appellant-bank. The High Court allowed the writ petition filed by the respondent, quashed the decision of the bank rejecting his application for voluntary retirement under the bank's scheme and directed the appellant-bank to accept his application for voluntary retirement forthwith.

2. This Court while granting special leave to appeal, by order dated February 11, 2005, stayed the operation of the order of the High Court coming under appeal. As a result, the respondent continued in service and eventually retired on reaching the age of superannuation on June 6, 2009. He has been paid his terminal dues and is also getting regularly his monthly pension. In view of this material change in circumstances during the pendency of the appeal, we suggested that the parties should negotiate and try to come to some amicable settlement. They were, however, unable to come to terms and the respondent insisted that the appeal be heard on merits and in case it is finally dismissed, then, the Court may consider how to appropriately mould the relief in his favour. We, accordingly, proceeded to examine the respondent's claim for grant of voluntary retirement under the scheme of the bank on merits.

3. In order to examine the case of the rival sides in perspective, it would be useful to briefly state the relevant facts. The board of directors of the appellant-bank in its meeting held on November 25, 2000 approved a voluntary retirement scheme for the officers and employees of the bank, called the IOB Officers/Employees Voluntary Retirement Scheme - 2000 ("the scheme" for short). The object of the scheme was "to adopt measures to have optimum human resources at various levels in keeping with the business strategies, skill profile to achieve balanced age and requirement of the bank." The scheme remained in operation for 5 weeks from December 15, 2000 to January 19, 2001.

4. The eligibility to apply for voluntary retirement under the scheme was laid down in Clause 4. Clause 4.1 provided that all permanent employees with 15 years of service or 40 years of age would be eligible to apply for voluntary retirement under the scheme. Clause 4.2 enumerated the six categories (from sub-clauses `a' to `f') that would not be eligible to seek voluntary retirement under the scheme. Under the heading `General Conditions' it was stated, in paragraph 4, that depending upon the requirement of the bank, the competent authority would have absolute discretion, subject to recording the reasons for the decision, either to accept or reject the request of an officer/employee seeking voluntary retirement under the scheme. Paragraph 10 provided that the cases of officers/employees opting for voluntary retirement under the scheme against whom disciplinary proceedings were contemplated would be considered by the respective disciplinary authorities having regard to the facts of each case before forwarding the request of such officers/employees to the competent authority. Under the heading `Clarifications' (in Annexure II to the Scheme), it was stated, in paragraph 2, that disciplinary proceedings would be deemed to be pending for the purpose of VRS, if the member had been placed under suspension or any notice had been issued to him to show cause why disciplinary proceedings should not be instituted against him and would be deemed to be pending until final orders were passed by the disciplinary authority.

5. On December 15, 2000, the respondent made an application seeking voluntary retirement from the service of the bank under the scheme. At that time, the respondent was working as Chief Manager (in Scale IV), Indian Overseas Bank, Allahabad. It is not disputed that he was quite eligible for making the application in that he was a permanent employee with more than 15 years of service and was over 40 years of age. Nevertheless, the bank did not accept his request and intimated him by letter dated February 21, 2001 that "the Competent Authority has decided not to accept his application considering (the) business/organizational requirements and administrative exigencies of the bank".

6. The respondent challenged the decision of the bank communicated to him vide letter dated February 21, 2001 in a Writ Petition (CMWP No.4167 of 2001) before the Allahabad High Court. In the supplementary counter affidavit filed in the case on behalf of the bank, it was stated that in Scale IV, to which the respondent belonged, there were 187 posts out of which 80 persons had applied for VRS under the scheme. The management accepted the applications of only 22 officers and the rest of the applications were rejected taking into account the various considerations, and the merits and demerits of the officers. In paragraph 6 of the supplementary counter affidavit, it was asserted that it was purely within the discretion of the bank to accept or not to accept the application of any particular officer for grant of voluntary retirement under the scheme. The High Court took exception to the stand of the bank that the matter lay purely within the discretion of the competent authority and criticised it as opposed to the mandate of Article 14 of the Constitution. The High Court also took the view that the words "taking into account the various considerations and merits and demerits of the officers" provided a very vague basis to decide whether or not to accept the application for VRS made by different officers. It also noted the allegations made on behalf of the respondent that the bank had allowed voluntary retirement even to officers against

whom disciplinary proceedings were pending or contemplated and who, therefore, were not eligible under the scheme. It, accordingly, allowed the respondent's writ petition by judgment and order dated November 27, 2002 holding that the bank had acted arbitrarily in his case and had rejected his application without according good reasons. The High Court quashed the order dated February 21, 2001 and directed the bank to reconsider the matter in light of the observations made by it and take a fresh decision, on the respondent's application for grant of VRS in accordance with the law and the scheme, within 6 weeks from the date of production of a certified copy of its order.

7. The respondent submitted a copy of the High Court order to the bank along with his representation dated December 7, 2002 whereupon the board of directors of the bank in its meeting held on January 11, 2003 constituted a committee consisting of the Chairman and Managing Director, the Executive Director and the General Manager (Personnel) to reconsider his request for voluntary retirement as directed by the High Court. The Committee in its meeting held on January 11, 2003 reconsidered the matter in great detail, taking into account the service record of the respondent. The Committee noted that the respondent was an agricultural engineering graduate and was appointed as a clerk in the bank on October 26, 1970. For his sincere and hard work, he was promoted as officer in Junior Management Grade Scale I on June 1, 1975, within 5 years of his appointment as clerk. His performance in the post was exemplary. The bank, therefore, decided to utilize his services abroad and posted him to the Hong Kong branch. Ordinarily, overseas assignments are given to Middle Management Grade Officers in Scale II and above but in the case of the respondent, who was at that time an officer in the Junior Management Grade I, he was given the assignment in view of his dedicated work and educational background. Even while serving abroad he was promoted to Middle Management Grade Scale II on July 1, 1982. After completing foreign assignment for a term, he was posted to the Lucknow region in August, 1982 and his services were utilized at the Varanasi Cantonment and Lucknow Branches. While working at Lucknow, the respondent was able to canvass a good number of deposit accounts and provided satisfactory customer service which earned him appreciation from the Zonal Manager. In view of his rich experience in Lucknow, the bank elevated him in position and posted him as Senior Manager in the Kankhal branch, which was selected by the Bank Management as the best branch during his tenure. The Committee further noted that considering his potential and ability the bank provided him various in-house and external trainings. He was promoted to the Middle Management Grade III during 1992 and further promoted to the Senior Management Grade Scale IV in the year 1998. His services were well utilized not only to core banking but also in specialized areas like foreign exchange, overseas trading, etc. and he had a track record of unblemished service. He had scored good ratings in all confidential reports. He had been given good exposure including foreign postings and had a lot of potential. Therefore, the bank did not want to lose the benefit of his services. The Committee concluded that keeping in view the past track record, the specialized skill expertise, potential, training imparted, organizational requirement and administrative exigencies, the services of the respondent were required for the development of the bank and hence, resolved not to accept the voluntary retirement application under the scheme. The decision of the Committee was communicated to the respondent who once again challenged it before the High Court in Civil Miscellaneous Writ Petition No.6162 of 2003.

8. In the second round of litigation, the appellant-bank, while resisting the writ petition filed by the respondent before the High Court on merits, once again referred to paragraph 4 of the General Conditions of the scheme, taking the stand that the acceptance or rejection of the request for voluntary retirement under the scheme lay within the absolute discretion of the competent authority.

9. The rejection of the respondent's application for voluntary retirement by the bank for the second time and the reiteration that the matter was within the absolute discretion of the competent authority, seems to have offended the High Court and it wrote a rather angry judgment. The High Court observed that the bank and its officers had acted in a highly arbitrary, discriminatory and malafide manner and had not shown any respect to the High Court by totally flouting its earlier judgment. It further said that despite the clear observation in its earlier judgment, the bank authorities had again "dared" to take the stand that it was the absolute discretion of the competent authority either to accept or reject the application. The court went on to say that the Chief Regional Manager of the bank who had filed the counter affidavit had absolutely no respect for the High Court and further that the court was at first inclined to issue a notice of contempt to him for invoking the absolute discretion of the competent authority which, according to the High Court, amounted to grossly contemptuous averments. The High Court, however, refrained from issuing any contempt notice assuming in his favour that he was probably not able to understand what he said in the affidavit. Adverting to the merits of the case, the court accepted the respondent's allegations that even while his request was turned down many officers who were not eligible were granted voluntary retirement under the scheme. The court held that the bank authorities had adopted a 'pick and choose' policy in accepting and rejecting the applications made by different officers/employees for grant of voluntary requirement. The High Court in its judgment (at page 19 of the SLP paper book) gave a list of employees, who, according to the respondent, were allowed voluntary retirement even though they were charge-sheeted or given show cause notice in contemplation of disciplinary proceedings and who were, therefore, ineligible in terms of Clause 4.2(c) of the scheme. The High Court gave another list of officers/employees (at page 20 of the SLP paper book) who, according to the respondent, were granted voluntary retirement even though they were given specialized training in the area of credit and foreign exchange and were, for that reason, ineligible in terms of clause 4.2(e) of the scheme. The High Court observed that the bank acted in a highly arbitrary and discriminatory manner by allowing voluntary retirement to officers/employees who were ineligible under the scheme and on the other hand denying it to the respondent who according to its own showing had a sterling record. In this connection, the High Court made the following observation:

"In our opinion the petitioner is fully eligible for VRS, 2000, and his application has been rejected arbitrarily and has been discriminated again. He has also been unnecessarily harassed by the respondents, as stated in para 18 of the petition by first transferring him to Chennai during the pendency of his writ petition and then posting him under an officer 3 years his junior.

The respondents themselves have admitted that the petitioner has been working with utmost sincerely (sic), honestly and diligence in discharging his duties in the bank. It seems that the policy of the bank is to punish the good, honest and competent officers and to reward those who are not. This, in our opinion, will lead to total demoralization of the good, honest and competent officers and employees of the bank if it is permitted to continue any further. The VRS scheme was floated for giving the benefit to the good officers and not for those who are having a bad service record, but it seems that the Bank in total disregard of the scheme has adopted a policy of pick and choose. Thus merit has in fact become demerit in the Bank. Those who are competent are denied VRS but those having a bad record are being given benefit of the VRS."

(emphasis added)

10. Proceeding thus, the High Court allowed the respondent's writ petition and by judgment and order dated September 3, 2003, set aside the decision of the appellant-bank not to accept the respondent's request for voluntary retirement and observing that any further remand would not serve any useful purpose, the High Court went on to direct the bank to accept the respondent's application for grant of voluntary retirement.

11. Mr. C.U. Singh, learned senior counsel appearing for the appellant-bank submitted that the High Court was in grave error in reviewing the bank's decision on the respondent's application for voluntary retirement as an appellate authority and substituting its own decision for that of the bank. Mr. Singh further submitted that the High Court was equally in error in denying to the competent authority in the bank the absolute discretion for accepting or rejecting the request for voluntary retirement made by an officer of the bank as expressly stipulated in the scheme. Learned counsel asserted that in the matter of voluntary retirement under the scheme, the bank has an absolute discretion to grant or reject the request and the legal position in this regard was settled by this Court. In support of the submission he referred to a decision of this Court in *Board of Trustees, Vishakhapatnam Port Trust and Ors. v. T.S.N. Raju and Anr'*., and relied upon the observations made in paragraphs 22, 33 and 34, which are as under:

"22. In our opinion, under the Scheme, the Chairman of the Port Trust has an absolute right either to accept or not to accept the applications filed by the employees for retirement under the voluntary retirement scheme...

33. In our opinion, the Chairman is competent to frame the scheme having regard to the exigencies of work and no one can claim voluntary retirement as of right. The learned Judges of the High Court have also not seen that the respondent's application for voluntary retirement cannot be considered in view of the seniority of service of the employees concerned.

34. In our opinion, the request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether to accept or reject the

request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. We, therefore, have no hesitation in coming to the conclusion that VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer."

12. The decision relied upon by Mr. Singh evidently supports his contention but the observations made by this Court as quoted above need to be understood in the context of the case. In the case of T.S.N. Raju, the Chairman of the Port Trust made a review on the implementation of the scheme for voluntary retirement and keeping in view the concern expressed by the Secretary, Department of Shipping, Ministry of Surface Transport, Government of India, took the decision that the request for voluntary retirement under the scheme should be considered only in case of employees who were below the age of 58 years. The application of T.S.N. Raju (and another respondent in that case) came up for consideration after they had crossed the age of 58 years and were accordingly rejected on the basis of the decision of the Chairman. They challenged the action of the Port Trust in rejecting their request for voluntary retirement, taking the plea before the court that the Port Trust had no discretion to reject their request to take retirement under the voluntary retirement scheme except in cases of the exigencies of service or the compelling necessities or the indispensability of the employees concerned. It was to rebut such sweeping assertion of right that this Court made the observation that under the scheme, the Chairman of the Port Trust had the absolute right to accept or not accept the request for voluntary retirement under the scheme.

13. The observations made in T.S.N. Raju do not mean that this Court endorsed or approved the discretion vested in the employer (be it the Port Trust or the bank) as absolute in the manner of an unruly horse prancing beyond the control of anyone or anything. In the 62nd year of the Republic, it is rather late in the day for the State or any of the State's agencies or instrumentalities to claim absolute discretion, like the discretion of a despot or a discretion completely divorced from reasonableness.

14. But at the same time, it must also be realized that reasonableness is not something in the abstract. The reasonableness of a decision or an action can only be judged in the totality of the facts and circumstances and having regard to the object and purpose sought to be achieved. For example, if the object is to select someone for public employment or for promotion to a higher post, the only reasonable thing to do would be to select the most suitable and meritorious among the candidates. The selection of a person of inferior merit or someone who is not even eligible would be wholly unreasonable if the object is to choose the best as it should be in case of selection for public employment or promotion to a higher post. But in case an organisation undertakes manpower planning with a view to downsize the personnel and cut down the overhead costs, very different considerations would apply and in that case the application of the yard stick for selection for public employment or for promotion to a higher post would lead to results opposed to the very object of the exercise.

15. We feel that the High Court committed the fundamental mistake in completely misconstruing the object and purpose of the voluntary retirement scheme. As wrongly assumed by the High Court, the object of the scheme was not to reward the good officers or to punish the bad ones. Even though depending upon personal circumstances, voluntary retirement under the scheme might have appeared to some individual officers as personally beneficial, it was not envisaged by the bank as a means to give personal rewards or to punish individual employees by granting or refusing to grant voluntary retirement to them. The objective of the scheme as stated in the circular issued by the bank was "to adopt measures to have optimum human resources at various levels in keeping with the business strategies, skill profile to achieve balanced age and requirement of the bank".

16. In *Bank of India and Anr. v. K. Mohandas and Ors.*<sup>2</sup>, one of us (Lodha, J.) had the occasion to examine the genesis and *raison d'être* of the voluntary scheme framed by the banks; in that judgment it was observed, in paragraphs 3, 4, 5 and 36, as follows:

"3. In the month of May, 2000, Government of India, Ministry of Finance (Banking Division), advised the nationalized banks to carry out detailed manpower planning as these banks were found to have 25% of their manpower as surplus. A Human Resource Management Committee was constituted to examine the said issue and to suggest suitable remedial measures.

4. The Committee so constituted observed that high establishment cost and low productivity in public sector banks affect their profitability and it was necessary for these banks to convert their human resources into assets compatible with business strategies. *Inter alia*, the Committee placed the draft voluntary retirement scheme with the Central Government that would assist the banks in their efforts to optimize their human resources and achieve a balanced age and skills profile in keeping with their business strategies.

5. With the approval of the Central Government, Indian Banks' Association (IBA) circulated salient features of the draft scheme to the nationalized banks for consideration and adoption by their respective boards vide its letter dated 31-8- 2000. The Board of Directors of each of the nationalized banks, keeping in view the objectives, considered the draft scheme and adopted it separately.

36. Any interpretation of the terms of VRS 2000, although contractual in nature, must meet the test of fairness. It has to be construed in a manner that avoids arbitrariness and unreasonableness on the part of the public sector banks who brought out VRS 2000 with an objective of rightsizing their manpower. The banks decided to shed surplus manpower. By formulation of the special scheme (VRS 2000), the banks intended to achieve their objective of rationalising their force as they were overstaffed. The special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between

the parties assumes significance and a harmonious construction to the Scheme and the Pension Regulations, therefore, has to be given."

(emphasis added)

17. Bearing in mind the object and purpose of the scheme as explained in the decision in Bank of India it is not difficult to see how the competent authority in the bank would deal with the applications for voluntary retirement made by individual officers; other things being equal between two applicants he would like to let go the one with the inferior service record and lower potential and consequently he would accept the application of the officer with the lower merit and may not accept the request of the officer with superior merit. This is for the simple reason that in the process of shedding surplus manpower no organisation would like to lose its best people.

18. From a purely subjective point of view the decision of the competent authority may appear to be "unfair" or even a "punishment" to the officer with the superior merit nevertheless it would be the proper and reasonable exercise of discretion in view of the basic objective of the scheme. We are not unconscious that the denial of request for voluntary retirement to an officer in practice may result in souring of relationship between the concerned officer and the bank (as it actually happened in this case) and as a consequence the concerned officer in future may not show the same competence and efficiency in the discharge of his duties for which he was sought to be retained in service. But that is a matter of personnel management and the competent authority is expected to factor in such considerations while taking a decision on individual applications. Such considerations would certainly not be a ground for the court to interfere with the decision of the competent authority. The discretion vested in the competent authority as stipulated in paragraph 4 under the heading 'General Conditions' (of the scheme) must be understood in this way and not absolute in the sense of being completely uncontrolled, whimsical or capricious.

19. Seen in this light even the grant of voluntary retirement to an employee who may not be strictly eligible under the scheme may not improve the claim of another applicant who might not only be eligible but with highly superior credentials. An employee facing a disciplinary proceeding and, therefore, ineligible under the scheme may otherwise also be completely useless. The bank may try to get rid of him by dropping the disciplinary proceeding or even by waiving the eligibility clause in his case. At worst the action of the bank may be irregular or even invalid in case of that particular employee. But unlike a selection for appointment or promotion to a superior post, this in itself would not provide a ground to another employee (eligible and with superior credentials) to claim retirement as a matter of right.

20. In this case, however, we need not go into that aspect of the matter because it was the definite case of the bank before the High Court that no person ineligible under the scheme was granted voluntary retirement. As regards the officers/employees who were allegedly allowed voluntary retirement even though they were given charge-sheets or show cause notices in contemplation of disciplinary proceedings, the bank in its counter affidavit had explained that the decision on their application for voluntary retirement was taken by the

competent authority after "disposal" of the charge-sheets. The High Court brushed aside the plea by observing that charge-sheets were not "disposed of"; a charge-sheet may be recalled or a proceeding arising from the charge-sheet may lead either to exoneration or the finding of guilt of the concerned employee. It further observed that the statement was made for obfuscation of the matter in issue.

21. We are of the view that the High Court took a highly technical view of the matter. What perhaps was meant by the bank was that the decision to accept their request for voluntary retirement was taken after the proceedings against those officers/employees were closed/dropped. Here, it may be recalled that this was quite in accordance with paragraph 10 of the "General Conditions".

22. As regards the officers who were allegedly given special training and were, therefore, ineligible for voluntary retirement, only Mr. Anthony Joseph, Pondicherry Branch, was in Scale IV, i.e. in the same scale as the respondent. In regard to Anthony Joseph, the bank in its rejoinder affidavit denied that he was given training in foreign exchange. We see no reason not to accept the statement made by the bank in this regard.

23. In light of the discussion made above, we are clearly of the view, that the bank had properly appraised the respondent's claim for voluntary retirement under the scheme and its decision not to accept the request was within the legitimate exercise of discretion that did not warrant any interference by the High Court. We are, therefore, constrained to hold that the judgment of the High Court coming under appeal is quite unsustainable.

24. We, accordingly, allow the appeal, set aside the impugned judgment and order passed by the High Court and dismiss the writ petition filed by the respondent.

25. There will be no order as to costs.

26. We are told that some other case(s) between the parties are pending before the High Court on some other issues. Needless to say that that case will be decided on its own merits and the decision in this appeal will not prejudice the case of the respondent.

<sup>1</sup>(2006) 7 SCC 0664

<sup>2</sup>(2009) 5 SCC 0313